

Freeborn & Peters LLP

April 7, 2004

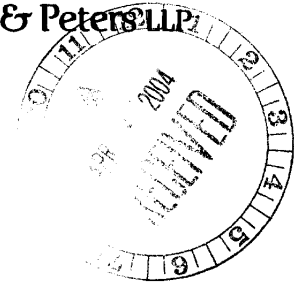
VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

FILED

APR - 8 2004

**SURFACE
TRANSPORTATION BOARD**



**Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 409X);
The Burlington Northern and Santa Fe Railway Company Abandonment
of Superior, Nebraska to Reynolds, Nebraska**

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

Chicago

Springfield

Dear Secretary Williams:

Enclosed for filing in the referenced docket are the original and ten copies of The Burlington Northern and Santa Fe Railway Company's Petition for Exemption, and a check for \$4,700.00, covering the filing fee.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

The environmental and historic reports have been forwarded to the responsible agencies and copies have been directed to the Section of Environmental Analysis. The Notice of Exemption includes a certificate of notice upon various interested state and federal authorities (the U. S. Department of the Interior – National Park Service, Recreation and Conservation Assistance Program; the U. S. Department of the Interior – National Park Service, Land Resource Division; the Department of Defense, Military Traffic Management Command; the Nebraska Public Service Commission; the Nebraska Department of Roads; the Kansas Department of Transportation; The Kansas Corporation Commission; and the Chief of Forest Service, U. S. Department of Agriculture). I have not received the affidavit of publication from the Belleville Telescope yet. I will supplement the Petition as soon as I receive it.

Sincerely,

Brian Nettles

/bn
Enclosures

ENTERED
Office of Proceedings

APR - 8 2004

Part of
Public Record

FILE RECEIVED

APR - 8 2004

TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

THE BURLINGTON NORTHERN AND)
SANTA FE RAILWAY COMPANY --)
ABANDONMENT AND DISCONTINUANCE)
OF SERVICE EXEMPTION BETWEEN)
SUPERIOR AND REYNOLDS IN)
JEFFERSON, THAYER AND NUCKOLLS)
COUNTIES, NEBRASKA AND REPUBLIC)
COUNTY, KANSAS)

DOCKET NO.
AB-6 (Sub No 409X)



210530

PETITION FOR EXEMPTION

ENTERED
Office of Proceedings

APR - 8 2004

Part of
Public Record

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY
2500 Lou Menk Drive
Fort Worth, TX

Petitioner

Michael Smith
Freeborn & Peters LLP
311 S. Wacker Drive, Suite 3000
Chicago, IL 60606-6677

Attorney for Petitioner

DATE FILED: April 8, 2004

FEE RECEIVED

APR - 8 2004

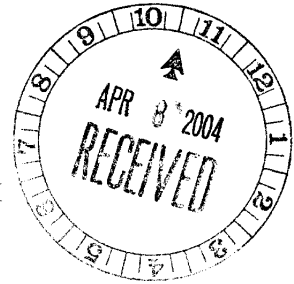
SURFACE
TRANSPORTATION BOARD

FILED
APR - 8 2004
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

THE BURLINGTON NORTHERN AND)
SANTA FE RAILWAY COMPANY --)
ABANDONMENT AND DISCONTINUANCE)
OF SERVICE EXEMPTION BETWEEN)
REYNOLDS AND SUPERIOR, IN)
JEFFERSON, THAYER AND NUCKOLLS)
COUNTIES, NEBRASKA AND REPUBLIC)
COUNTY, KANSAS)

DOCKET NO.
AB-6 (Sub No 409X)



FEE RECEIVED
APR - 8 2004
SURFACE
TRANSPORTATION BOARD

PETITION FOR EXEMPTION

ENTERED
Office of Proceedings

APR - 8 2004

Part of
Public Record

INTRODUCTION

Pursuant to 49 U.S.C. § 10502(a) and C.F.R. § 1121.1, et seq., THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (BNSF) hereby petitions for an exemption from the requirements of 49 U.S.C. § 10903 for abandonment of its rail and discontinuance of rail service between Milepost 167.78 near Superior, Nebraska and Milepost 127.83 near Reynolds, Nebraska, a distance of 39.95 miles.

SUBJECT RAIL LINE

BNSF proposes to the abandon 39.95 miles of rail line from milepost 167.78 near Superior, Nebraska and milepost 127.83 near Reynolds, Nebraska (the "Line"). The Line traverses United States Postal Service ZIP Codes 68429, 68375, 66959, 66935, 68327, 68325, 66964, 68943 and 68978. A map of the Line is attached as Exhibit 1.

FEE RECEIVED

APR - 8 2004

SURFACE
TRANSPORTATION BOARD

Based on information in BNSF's possession, the Line does not contain federally granted right-of-way.

Due to excessive rain in June 2003, the Line suffered severe damage and washouts. The damage was so severe that the entire Line east of Hardy, a station about eight miles east of Superior, has been out of service since June 2003. See Exhibit 2, the Verified Statement of Richard A. Batie.

REASONS FOR THE ABANDONMENT

An exemption is sought for abandonment and discontinuance of rail service on the Line because (1) operation of the Line is unprofitable; (2) the Line requires substantial track maintenance and rehabilitation; and (3) all active rail customers on the Line have feasible transportation alternatives and do not oppose the proposed abandonment.

1. Unprofitability and Costly Rehabilitation Requirements

The rail traffic and revenues on the Line have declined significantly, and the traffic levels on the Line do not justify its continued operation and maintenance. The revenues currently generated by the Line do not cover the cost of maintenance and rehabilitation.

In 1980, the former BN handled 1,849 cars on the Superior to Reynolds line compared with the 105 handled in 2002. See Exhibit 2, the Verified Statement of Richard A. Batie. This is a 94.3 percent decline in traffic since 1980. Although the inbound shipments to the line increased from 48 cars handled in 1980 to 60 cars handled in 2002, the outbound shipments declined by 96.9% during the 22 years. In 1980, 1,801 cars were shipped, but in 2002 only 55 cars were shipped. See Exhibit 2, Verified Statement of Richard A. Batie.

Declining revenues generated on the line do not justify incurring the projected costs of operating the Pawnee-Endicott line, i.e. the cost to maintain the track and bridges on the 39.95

miles between Superior and Reynolds and restoring the track to normal operating conditions. Due to flooding in June 2003, an expenditure estimated in the range of \$1 million is required to rehabilitate the Superior-Reynolds line to restore the line to FRA Class I track safety standards. See Exhibit 2, the Verified Statement of Richard A. Batie. This rehabilitation cost along with continued operating costs incurred on the line would place an undue burden on BNSF and interstate commerce.

(2) Shippers have feasible transportation alternatives and Support the Proposed Abandonment

Nebraska State Highway #8 parallels the line and provides truck access to the grain elevators and fertilizer facilities located along the Superior to Reynolds line. US Highway #81 bisects the line at Chester. The primary and secondary highway network in the area of the Superior to Reynolds line is in excellent condition overall and has the capacity to handle additional truck traffic. See Exhibit 2, the Verified Statement of Richard A. Batie.

There would be little adverse effect on local interests from abandonment because shippers on the Line have feasible transportation alternatives, as shown in the Verified Statement of Richard A. Batie (Exhibit 2) and in Exhibits 3 to 5. All active shippers on the Line have indicated that they support the abandonment.

THE EXEMPTION STANDARDS HAVE BEEN MET

Under 49 U.S.C. §10903, a rail line cannot be abandoned without the prior approval of the Board. However, under 49 U.S.C. § 10502, the Board shall exempt a rail transaction from regulation when it finds that (1) application of the pertinent statutory provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101; and (2) either the transaction is of limited scope of regulation is unnecessary to protect shippers from the abuse of market power.

The abandonment and discontinuance proposed by BNSF here clearly falls within the statutory standards requiring exemption under 49 U.S.C. §10502.

The national rail transportation policy as enumerated in 49 U.S.C. §10101 obviates the need for detailed scrutiny by the Board in 49 U.S.C. §10903 in this instance. The need for federal regulatory control of the rail transportation system is minimized in this context in the form of a simple exemption for abandonment of the subject line. See 49 U.S.C. §10101(2). Specifically, by minimizing the regulatory expense and delay inherent in a full abandonment application, exemption will expedite regulatory decisions and reduce regulatory barriers to exit. See 49 U.S.C. §§10101(2) and (7). Furthermore, BNSF will avert significant avoidable costs in the future if it is permitted to abandon the Line that is significantly deteriorated. An exemption by the STB in this instance will allow BNSF to compete more effectively, foster sound economic conditions, and encourage efficient management in accordance with the national rail transportation policy. See 49 U.S.C. §§10101(4), (5), and (9). See, e.g., STB Docket No. AB-43 (Sub-No. 172X), *Illinois Central Railroad Company-Abandonment Exemption-In Adams County, MS*, Served March 20, 2002; STB Docket No. AB-55 (Sub-No. 601X), *CSX Transportation Inc. – Abandonment Exemption – In Lenoir County, NC*, Served March 8, 2002; STB Docket No. AB-497 (Sub No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997; STB Docket No. AB-318 (Sub-No 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997.

This transaction will not result in an abuse of market power. Most shippers that have formerly used this Line have switched to motor carrier service. The area surrounding the Line has an adequate network of roadway and federal and state highways capable of handling truck

traffic for limited shipments that originate or terminate along the Line. In fact all known active shippers on the Line have been contacted regarding the proposed abandonment and each shipper supports the proposed abandonment. See Exhibits 3 and 4. Because shippers on the Line support the proposed abandonment and have adequate transportation alternatives that they are already using, application of 49 U.S.C. § 10903 to the proposed abandonment and discontinuance is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-850X, *St. Croix Valley Railroad Company--Abandonment and Discontinuance Of Service Exemption--In Pine and Kanabec Counties, MN*, Served July 7, 2003; STB Docket No. AB-468 (Sub-No. 5X), *Paducah & Louisville Railway, Inc.--Abandonment Exemption--In McCracken County, KY*, Served June 18, 2003; STB Docket No. AB-55 (Sub-No. 615X), *CSX Transportation, Inc.-Discontinuance Exemption-(Between East Of Memphis And Cordova) In Shelby County, TN*, Served July 17, 2002. Since no abuse of market power would ensue from this transaction, the Board need not determine whether the proposed transaction is of limited scope. STB Docket No. AB 290 (Sub-No. 184 X), *Norfolk And Western Railway Company - Abandonment Exemption - In Cincinnati, Hamilton County, OH*, Served on May 13, 1998

Because the evidence warrants an exemption from regulation required by 49 U.S.C. § 10502(a), the Board should grant the proposed exemption.

ENVIRONMENTAL AND HISTORICAL REPORTS

The Environmental Report required by 49 C.F.R. §1105.7 and the Historic Report required by 49 C.F.R. §1105.8 were previously served on the STB and the required parties and are attached here as Exhibit 5, respectively, to this Petition for Exemption. The certificate of Service evidencing BNSF's compliance with 49 C.F.R. §1105.11 is attached to the corresponding reports.

LABOR STANDARDS

The interest of railroad employees will be protected by the conditions imposed *in Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

DRAFT FEDERAL REGISTER NOTICE

The draft Federal Register notice is attached to this Petition as Exhibit 6.

WHEREFORE, BNSF respectfully requests that the Board issue a decision exempting the proposed abandonment from the provisions of 49 U.S.C. §10903 and direct that the exemption be effective on the date of the Board's decision.

Respectfully submitted,



Michael Smith
Freeborn & Peters LLP
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Dated: April 6, 2004

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
NO. AB-6 (Sub No. 409X)

CERTIFICATION

I hereby certify that (1) service of notice upon the U.S. Department of the Interior, National Park Service, Recreation Park Service, Land Resource Division; the Department of Defense, Military Traffic Management Command; the Nebraska Public Service Commission; the Nebraska Department of Roads; the Kansas Corporation Commission; the Kansas Department of Transportation; and the Chief Forest Service, U.S. Department of Agriculture was accomplished by mailing a copy thereof on March 18, 2004; (2) the environmental and historic reports were serviced upon the agencies identified in 49 C.F.R. § 1105.7(b) and the State Historic Preservation Offices on March 18, 2004; (3) service of notice upon the State Clearinghouses was accomplished by mailing a copy thereof on March 18, 2004; and (4) the publication requirements of 49 C.F.R. § 1105.12 have been complied with, to wit: publication of notice was accomplished on _____, 2004 in The Belleville Telescope, on March 31, 2004 in The Hebron Journal Register, on March 25, 2004 in The Superior Express and on March 26, 2004 in The Fairbury Journal News, affidavits of publication are attached.



Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Date: April 6, 2004

**NOTICE OF
INTENT TO ABANDON**

The Burlington Northern and Santa Fe Railway Company give notice that on or after April 7, 2004, it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502(a) and 49 C.F.R. B11121, et seq., from the requirements of 49 U.S.C. 10903, for abandonment permitting the abandonment of 39.95 miles of railroad line between railroad Milepost 127.83 near Reynolds, Jefferson County, Nebraska and Milepost 167.78 near Superior, Nuckolls County, Nebraska, which line segment traverses through United States Postal Zip Codes 68429, 68375, 68327, 68325, 66959, 66935, 66964, 68943 and 68978. The proceeding will be docketed as No. AB-6 (Sub No. 409X).

The Board's Section of Environmental Analyses (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analyses, Surface Transportation Board, 400 North 17th Street, Suite 200, Omaha, Nebraska 68102. For more information, contact: Steve Anderson 603, Jeff Arend 597.

Steve Anderson 603, Jeff Arend 597
Larry Ginn/Bryce Mammen 225
Illey Bowl 2287
S EARLY (City)



Bowl
suits

son is back for dash action after an
track team. He opened his season
invite in Superior and assisted in
Sutton Relays last week.

AFFIDAVIT OF PUBLICATION

State of Nebraska) **SS.**
County of Thayer)

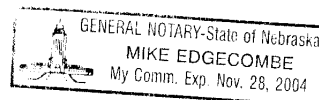
Allyson Edgecombe, being first duly sworn, on oath says that she is the bookkeeper for the publisher of the HEBRON JOURNAL-REGISTER, a legal newspaper under the statutes of the state of Nebraska published and of general circulation in said county; that she has personal knowledge of the facts stated in this affidavit; and that the annexed notice was published in said newspaper for 1 consecutive week(s), the first publication being on the 31st day of March, 2004.

Allyson Edgecombe

Subscribed in my presence and sworn before me in the office of the HEBRON-JOURNAL-REGISTER of Thayer County, Nebraska, this 31st day of March, 2004.

FEES \$29.21

Mike Edgecombe
Notary Public



(First published March 25, 2004
in *The Superior Express*)

**NOTICE OF INTENT
TO ABANDON**

The Burlington Northern and Santa Fe Railway Company gives notice that on or after April 7, 2004, it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502(a) and 49 C.F.R. B 11121, et seq., from the requirements of 49 U.S.C. 10903, for abandonment permitting the abandonment of 39.95 miles of railroad line between railroad Milepost 127.83 near Reynolds, Jefferson County, Nebraska and Milepost 167.78 near Superior, Nuckolls County, Nebraska, which line segment traverses through United States Postal Zip Codes 68429, 68375, 68327, 68325, 66959, 66935, 66964, 68943 and 68978. The proceeding will be docketed as No. AB-6 (Sub No. 409X).

The Board's Section of Environmental Analyses (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001 or by calling that office at 202-565-1538.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, N.W., Washington DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Services at 202-565-1592. Copies of any comments or requests for conditions should be served on the applicant's representative Michael Smith, Freeborn & Peters, 311 S. Wacker Drive, Suite 3000, Chicago, Illinois 60606-6677 - telephone (312) 360-6724.

Affidavit of Publication

State of Nebraska, }
Nuckolls County } SS.

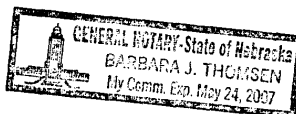
W.A. Blauvelt, being first duly sworn, deposes and says that he is the publisher of The Superior Express, a weekly newspaper of general circulation, printed in the English language in the City of Superior, Nuckolls County, Nebraska; that the said paper is printed wholly in the office of the affiant in the City of Superior, aforesaid; that it has a bona fide circulation of more than three hundred copies weekly; that it has been published and circulated within the said county for more than 52 weeks prior to the first publication of the attached notice and that it has in every way complied with the statutory requirement for a legal newspaper; that the annexed notice was published in the said

paper for 1 consecutive weeks, the first publication being on the 25th day of Mar, 2004 and the last publication the

_____ day of _____, 19____

Publishing Fee \$31.68 1213

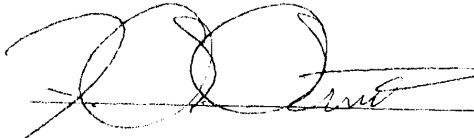
Subscribed and sworn to before me this 25th day of March, 2004.
Barbara J. Thomse
Notary Public



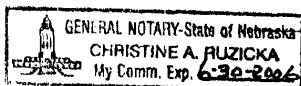
PROOF OF PUBLICATION
THE FAIRBURY JOURNAL-NEWS.

STATE OF NEBRASKA, Jefferson County, ss.

E. A. Arnold being first duly sworn on oath deposes and says that he is **Publisher** of **THE FAIRBURY JOURNAL-NEWS** that he has actual knowledge of the facts hereinafter set forth; that the printed notice hereto attached was published in *The Fairbury Journal-News* once each week, ~~successive weeks on the same day of each week; that the first publication was on~~ March 26, 2004, and the last publication was on March 26, 2004; that said *The Fairbury Journal-News* is printed and published and has a general circulation in Jefferson County, Nebraska; that it has a bona fide circulation in excess of 300 copies weekly and has been published within said county for 52 successive weeks prior to the publication of this notice; and that it is a legal newspaper under the statutes of the State of Nebraska.



Subscribed and sworn to before me this 2 day of April, 2004.



Christine A. Ruzicka
Notary Public

My commission expires June 30, 2006.

Publication fee 69 lines of 8 point type 1 times
\$ 31.05

NOTICE OF INTENT TO ABANDON

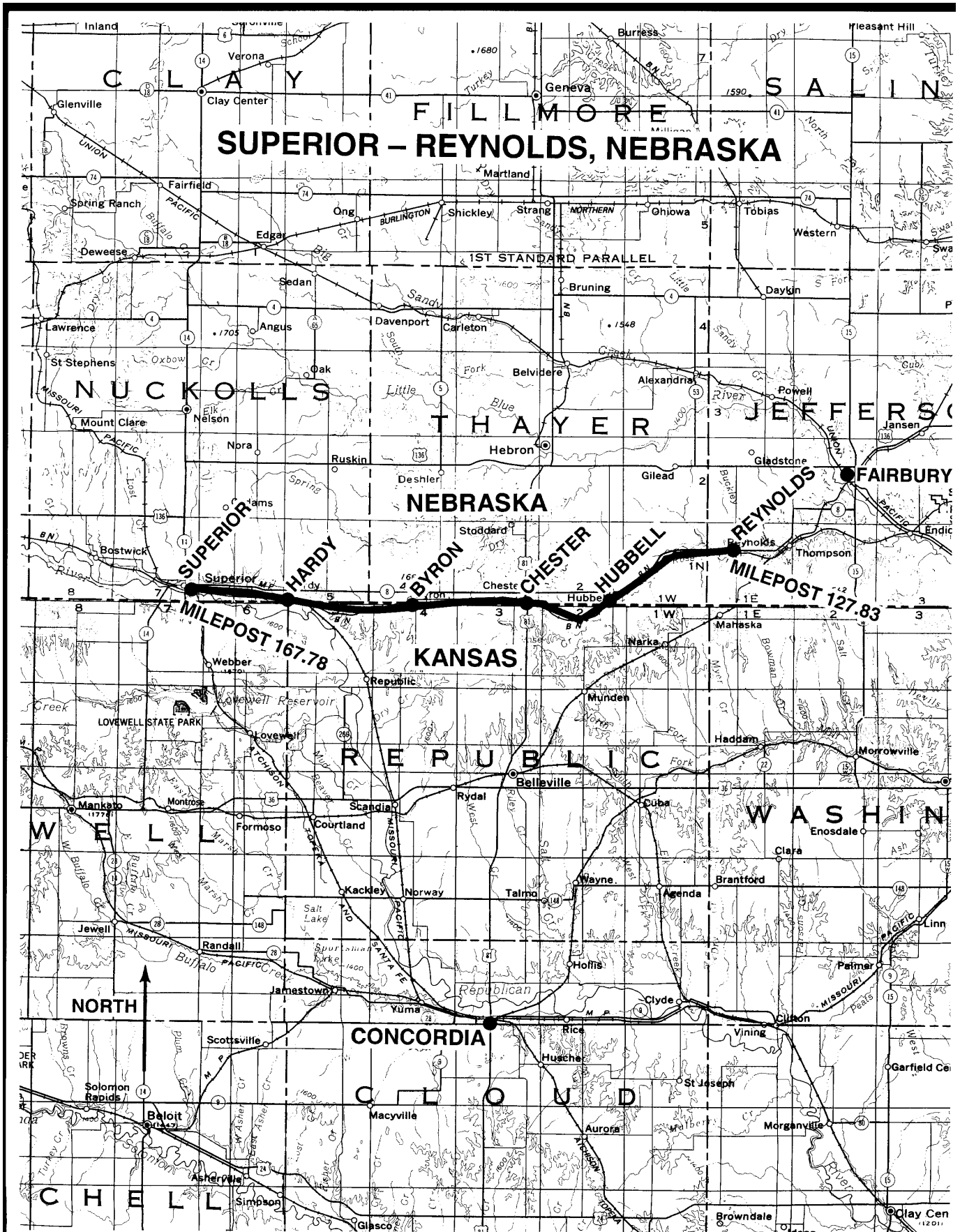
The Burlington Northern and Santa Fe Railway Company gives notice that on or after April 7, 2004, it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502(a) and 49 C.F.R. § 11121, et seq., from the requirements of 49 U.S.C. 10903, for abandonment permitting the abandonment of 39.95 miles of railroad line between railroad Milepost 127.83 near Reynolds, Jefferson County, Nebraska and Milepost 167.78 near Superior, Nuckolls County, Nebraska, which line segment traverses through United States Postal Zip Codes 68429, 68375, 68327, 68325, 68959, 68935, 68964, 68943 and 68978. The proceeding will be docketed as No. AB-6 (Sub No 409X).

The Board's Section of Environmental Analyses (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001 or by calling that office at 202-565-1538.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, N.W., Washington, DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Services at 202-565-1592. Copies of any comments or requests for conditions should be served on the applicant's representative Michael Smith, Freeborn & Peters, 311 S. Wacker Drive, Suite 3000, Chicago, Illinois 60606-6677 - telephone (312) 360-6724.

1

SUPERIOR – REYNOLDS, NEBRASKA





2

VERIFIED STATEMENT OF RICHARD A. BATIE

During the month of June, 2003 Southeastern Nebraska received substantial rains which resulted in several washouts on BNSF trackage in the area. The estimated damage that flooding caused on the Superior to Reynolds, Nebraska line is estimated to be in the range of one million dollars. The flooding and washouts resulted in the discontinuance of service to most of the stations along the Superior to Reynolds, Nebraska line. The stations of Byron, Chester, Hubbell and Reynolds were embargoed due to the floods and washouts and are currently not receiving rail service.

Two customers have used the Superior to Reynolds line during the past four years. One of the customers is Aurora Cooperative of Aurora, Nebraska which has grain elevators and fertilizer facilities located along the line at Hardy, Byron, Chester and Hubbell. The other customer is AGP which has a grain elevator at Chester. I have personally contacted representatives from both customers, and they have furnished BNSF with a letter indicating that they do not oppose the abandonment of the Superior to Reynolds line.

In 1980, Burlington Northern Railroad (BN) handled 1,849 cars on the Superior to Reynolds line. This compares to 105 cars handled on the line in 2002. 2002 was the last full calendar year that the entire line was in operation prior to the June 2003 rains which washed out most of the line. The difference between 1980 and 2002 traffic on the line represents an overall decline in carloadings of 94.3%. Traffic on the line for the years of 2000, 2001, 2002 and 2003 is attached as Exhibit A.

During 2000, 2001, 2002 and 2003 Aurora Cooperative of Aurora, Nebraska used the line at three different locations where it owns grain elevators and fertilizer facilities on the line. Aurora Cooperative owns grain elevators on the line at Hardy, Byron and Hubbell and owns

fertilizer facilities on the line at Hardy, Byron and Chester. Aurora Cooperative owns 17 grain elevators in Nebraska and Kansas, with unit train elevators located at Aurora and Murphy, Nebraska on BNSF and at Grand Island, Central City and Sedan, Nebraska on the Union Pacific Railroad (UP). Following the abandonment and discontinuance of the Superior to Reynolds line, Aurora Cooperative intends to truck its grain from its elevators on the Superior to Reynolds line to its larger elevators in the area in order to take advantage of unit train efficiencies. Aurora Cooperative intends to utilize trucks for its inbound fertilizer shipments to facilities on the line following the proposed abandonment and discontinuance.

AGP owns 34 grain elevators throughout a seven state area including the one at Chester on the Superior to Reynolds line at. AGP also owns 10 agricultural processing plants throughout the Midwest and export elevators in Washington and Minnesota. AGP has 14 unit train shipping elevators with locations on five railroads including BNSF. The unit train shipping elevators are located in North Dakota (3), Nebraska (3), Iowa (3), Texas (3), and Kansas (2). AGP intends to utilize trucks to ship its grain from Chester in the future.

Nebraska State Highway #8 parallels the line and provides truck access to the grain elevators and fertilizer facilities located along the Superior to Reynolds line. I have driven State Highway #8 between Superior and Reynolds and this highway is in excellent condition and underutilized. US Highway #81 bisects the line at Chester and this highway is also in excellent condition. The primary and secondary highway network in the area of the Superior to Reynolds line is in overall excellent condition, underutilized and has the capacity to handle additional truck traffic.

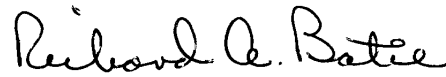
Both Aurora Cooperative and AGP, the only customers which have utilized the Superior to Reynolds, Nebraska line during the past four years, have furnished BNSF with letters stating

that they do not oppose the proposed abandonment of the line. Following the proposed abandonment the Aurora Cooperative elevators and facilities on the Superior to Reynolds line will take advantage of their unit train locations to ship their grain and rely on trucks to receive their inbound fertilizer. Also following the proposed abandonment the AGP elevator at Chester will utilize trucks to ship its grain. The highway network in the area is more than adequate to handle the truck traffic to and from the customers located along the line.

VERIFICATION

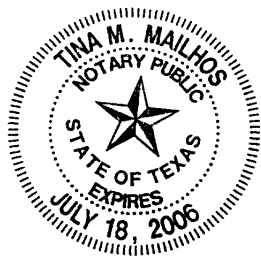
STATE OF TEXAS)
)ss
COUNTY OF TARRANT)

Richard A. Batie makes oath and says he is Manager, Shortline Development in the Network Development department of The Burlington Northern and Santa Fe Railway Company; that he has been authorized by the Applicant to verify and file with the Surface Transportation Board the foregoing Petition of Exemption in AB-6 (Sub-No. 409X); that he affirms that he has carefully examined all of the statements in the Petition; that he has knowledge of the facts and matters relied upon in the Petition; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.



Richard A. Batie
Manager, Shortline Development

Subscribed and sworn to before me the 6 day of April, 2004.




Notary Public

A

SUPERIOR – REYNOLDS, NEBRASKA
2000 – 2003 TRAFFIC

<u>STATION</u>	<u>CARS HANDLED (Inbound and Outbound)</u>			
	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
<u>HARDY:</u> AURORA COOP	61	121	51	39
<u>BYRON:</u> AURORA COOP	8	46	38	4
<u>CHESTER:</u> AGP	0	0	50	23
<u>HUBBELL:</u> AURORA COOP	0	88	26	0
<u>REYNOLDS:</u> NO TRAFFIC	0	0	0	0
TOTAL	69	255	165	66

3



COOPERATIVE

605 12th Street • P.O. Box 209 • Aurora, Nebraska 68818 • Tele:402.694.2106 • Fax:402.694.6943

February 13, 2004

Richard Batie, Manager
Shortline Development
Burlington Norther & Santa Fe Railway
2500 Lou Menk Drive 3rd Floor
Fort Worth TX 76131

RE: Docket AB-6, Sub No. 409X

Dear Richard:

This refers to the proposed abandonment of BNSF's 39.95 mile Superior (Milepost 167.78) to Reynolds, Nebraska, (Milepost 127.83) line which will be filed for abandonment with the Surface Transportation Board (STB) in Docket AB-6, Sub No. 409X shortly.

Aurora Cooperative has been a customer that has utilized the Superior to Reynolds, Nebraska, line during the past two years and does not object to the proposed abandonment of the line. Aurora Cooperative further requests that the STB expedite the abandonment process to allow an early abandonment.

Sincerely,

George Hohwieler
President

GH/lk

4



Gary Devlin
Manager Rail Service

P.O.Box 2047
Omaha, NE 68103-2047
402-492-7708(Ph)
402-498-5504(Fax)
402-670-0628 (Cell)
gdevlin@agp.com

Monday, April 05, 2004

Mr. Richard Batie, Manager
Shortline Development
The Burlington Northern & Santa Fe Railway
2500 Lou Menk Drive, 3rd floor
Fort Worth, Texas 76131

RE: Docket AB-6, Sub No. 409X

Dear Richard,

This refers to the proposed abandonment of BNSF's 39.95 mile Superior (Milepost 167.78) to Reynolds, NE (Milepost 127.83) line which will be filed for abandonment with the Surface Transportation Board (STB) in Docket AB-6, Sub No. 409X shortly.

AGP has been a customer that has utilized the Superior to Reynolds, NE line during the past two years and does not object to the proposed abandonment of the line. AGP further requests that the STB expedite the abandonment process to allow an early abandonment.

Sincerely,



Gary Devlin
Manager Rail Service

5

BEFORE THE
SURFACE TRANSPORTATION BOARD

In the Matter of The
Burlington Northern and Santa Fe
Railway Company Abandonment and
Discontinuance of Service Exemption Between
M.P. 167.78 near Superior, Nebraska and
M.P. 127.83 near Reynolds, Nebraska
in and through Jefferson, Thayer and
Nuckolls Counties, Nebraska and
Republic County, Kansas

Docket No. AB-6
(Sub No. 409X)

ENVIRONMENTAL REPORT

The Burlington Northern and Santa Fe Railway Company (BNSF) proposes to file a petition under 49 U.S.C. § 10502 (a) for an exemption from 49 U.S.C. § 10903 for abandonment and discontinuance between M.P. 167.78 near Superior, Nuckolls County, Nebraska and M.P. 127.83 near Reynolds, Jefferson County, Nebraska, a total distance of approximately 39.95 miles. The following information is submitted to the Surface Transportation Board ("Board" or "STB") by BNSF in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's proposed Petition for Exemption.

(1) Proposed action and Alternatives: Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

BNSF seeks to abandon and discontinue service of the line. A map of the line is attached as Exhibit A.

(2) Transportation system: Describe the effect of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

The proposed exemption will have a minimal effect on regional or local transportation systems and patterns. Shippers along the line used to include Aurora Coop at Hardy, Byron and Hubbell and AGP at Chester. Due to June, 2003 heavy rains which resulted in washouts of most of the customer's facilities on the line, the line east of Hardy was embargoed. As a result, most of the customers on line have been and will continue to utilize alternative transportation arrangements.

(3) Land Use:

(i) Based on consultation with local and/or regional planning agencies and/or review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

To the best of its knowledge, BNSF believes that the proposed exemption will be consistent with local or regional land use plans. The Board of Commissioners from Jefferson County, Nuckolls County and Thayer County were notified by letters dated July 24, 2003 and the Board of Commissioners from Republic County was notified by a letter dated August 6, 2003. See Exhibits B, C, D and E letters to the Board of Commissioners of Jefferson County, Nuckolls County, Thayer County and Republic County. As of the date of this report, none of the Board of Commissioners has not responded. BNSF will provide the Board copies of any response it may receive.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

The abandonment will have no effect on prime agricultural land.

See Exhibits F, G, and H letters from the Natural Resources Conservation Service .

(iii) If any action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9

N/A

(iv) If the proposed action is abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10906 and explain why.

There are no plans to improve the property for trails or any other public use. With the recent flood, the cost would be too high to prepare this section for public use. See Exhibit I, letter from the Jefferson County Planning and Zoning.

(4) Energy:

(i) Describe the effect of the proposed action on transportation of energy.

To the best of BNSF's knowledge there are no undeveloped energy resources such as oil, natural gas or coal in the vicinity of this line.

(ii) Describe the effect of the proposed action on recyclable commodities.

The proposed abandonment and discontinuance will not adversely affect movement or recovery of recyclable commodities as this line is out of service.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

Since the rail traffic density is nominal at the current time, the abandonment should not result in any significant impacts on overall energy efficiency.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year, or

(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in the energy consumption and show the data and methodology used to arrive at the figure given.

Since the rail traffic density is nominal at the current time, the diversions from rail to motor carriage will be minimal. In 2002, the line had a total of 165 cars , which does not affect wither threshold in subsections (A) or (B) above.

(5) Air:

(i) If the proposed action will result in either:

(A). An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of the line effected by the proposed, or

No.

(B). An increase in rail yard activity of at least 100% (measured by carload activity), or

No.

(C). An average increase in truck traffic of more than 10% of the average daily traffic (“ADT”) or 50 vehicles a day (“VPD”) on any affected road segment, quantify the anticipated effect on air emissions.

The action will not involve an increase in truck traffic of more than 10% ADT or 50 VPD on any affected road, nor would

the abandonment result in truck traffic increases by more than 10% of ADT or 50 VPD.

(ii) If the proposed action affects a Class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three train a day on any segment of rail line, or

N/A

(B) An increase in rail yard activity of at least 20% (measured by carload activity), or

N/A

(C) An average increase in truck traffic or more than 10-% of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by State implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505) or in a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The proposed action is not within a class I or non attainment area and would not result in any increased rail or truck activity meeting the thresholds described in subsections (A), (B) or (C) above.

(iii) If the transportation of ozone depleting materials (such as nitrogen oxide and from) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

This action should have no effect on the transportation of ozone-depleting materials. This line has not traditionally accommodated shipment of ozone depleting materials.

(6) Noise: If any of the thresholds identified in item (5)(c) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more,

N/A

(ii) An increase to a noise level of 76 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities and nursing homes) in the project area and quantify the noise increase for those receptors if the thresholds are surpassed.

N/A

(7) Safety:

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad crossings).

This proposed abandonment and discontinuance is not expected to adversely affect health or public safety. There are 41 public crossings and 31 private crossings. During salvage operations on the line, precautions will be taken to ensure public safety, and contractors will be required to satisfy all applicable health and safety laws and regulations.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills, and the likelihood of and accidental release of hazardous materials.

Abandonment and discontinuance will not result in transportation of hazardous materials.

(iii) If there are any known hazardous waste site or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

There are no known hazardous waste sites where there have been known hazardous materials spills on the right of way from M.P. 167.78 near Superior, Nebraska and M.P. 127.83 near Endicott, Nebraska.

(8) Biological resources:

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

No Federally listed or proposed threatened or endangered species are expected to occur within the project area. See Exhibit J, letter from the U.S. Fish and Wildlife Service, Nebraska Field Office. There should be no adverse impacts to fish and wildlife resources, including threatened and endangered species. See Exhibit K, letter from the U.S. Fish and Wildlife, Kansas Field Office. There will be no significant impacts to crucial wildlife habitats and the Kansas Department of Wildlife and Parks could not document any potential impacts to currently listed threatened or endangered species or species in need of conservation. See Exhibit L, letter from the Kansas Department of Wildlife and Parks. There are no threatened/endangered species and designated or proposed critical habitat located on or adjacent to the right-of-way proposed for abandonment. See Exhibit M, letter from the Nebraska Game and Parks Commission.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

The proposed abandonment will not affect any public lands (Federal lands) administered by the Bureau of Land Management. See Exhibit N, e-mail from the Bureau of Land Management, Newcastle, Wyoming Field Office. The Bureau of Land Management has no public lands or minerals that would be impacted on the portion located in Republic County, Kansas. See Exhibit O, letter from the Bureau of Land Management, Amarillo, Texas Field Office. The proposed project does not appear to impact federal fish and wildlife management facilities. See Exhibit J, letter from the U.S. Fish and Wildlife Service, Nebraska Field Office. The project will not impact any public recreational areas or crucial wildlife habitats. See Exhibit K, letter from the Kansas Department of Wildlife and Parks. There are no wildlife refuges/sanctuaries adjacent to the proposed abandonment. See Exhibit M, letter from the Nebraska Game and Parks Commission.

(9) Water:

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

BNSF believes that the proposed exemption will be consistent with applicable Federal, State or local water quality standards. The Nebraska Department of Environmental Quality and the Kansas Department of Health and Environment were notified by letters dated July 24, 2003 and August 6, 2003. See Exhibits P and Q. As of the date of this report, neither

has not responded. BNSF will provide the Board copies of any response it may receive.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year floodplains will be affected. Describe the effects.

The project will not require a Department of Army permit. See Exhibit R and S, letters from the Corps of Engineers. The proposed abandonment will have no effect on 100 year floodplain. See Exhibit T, letter from the Thayer County Zoning Administrator. The proposed abandonment will not alter the flood plain area. See Exhibit I, letter from the Jefferson County Planning and Zoning.

(iii) State whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.

BNSF believes that Section 402 permits are not required for the proposed abandonment. The Nebraska Department of Environmental Quality and the Kansas Department of Health and Environment were notified by letters dated July 24, 2003 and August 6, 2003. See Exhibits P and Q. As of the date of this report, neither has responded. BNSF will provide the Board copies of any response it may receive.

(10) Proposed Mitigation: Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Any salvage operations that may result will be in accordance with BNSF's general practice of requiring its private contractors to comply with all federal, state and local laws

and regulations pertaining to the environment, including, but not limited to noise, air quality, water quality, and items of historical or archaeological significance. The project itself should mitigate the environmental effects of reinstating active rail operations in the area.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written over a thin horizontal line.

Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Dated: April 6, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

In the Matter of The
Burlington Northern and Santa Fe
Railway Company Abandonment and
Discontinuance of Service Exemption Between
M.P. 167.78 near Superior, Nebraska
and M.P. 127.83 near Reynolds, Nebraska
in and through Jefferson, Thayer and
Nuckolls Counties, Nebraska and
Republic County, Kansas

Docket No. AB-6
(Sub No. 409X)

HISTORICAL REPORT

The following is submitted to the Surface Transportation Board by The
Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the
Board's reporting requirements set forth in 49 C.F.R. § 1105.8 for the purpose of assisting
the Board's environmental and historical assessment regarding BNSF's proposed Petition
for Exemption for abandonment and discontinuance of its line between M.P 167.78 near
Superior, Nuckolls County, Nebraska and M.P. 127.83 near Reynolds, Jefferson County,
Nebraska, total distance of 39.95 miles, in and through Nuckolls, Thayer and Jefferson,
Counties, Nebraska and Republic County, Kansas.

(1) A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently
detailed to show buildings and other structures in the vicinity of the proposed action)
showing the location of the proposed action, and the locations and approximate
dimensions of the railroad structures that are 50 years old or older and are part of the
proposed action;

One copy of a U.S.G.S. Topographical map has been provided to the Nebraska
State Historical Society and the Kansas Historical Society and one copy is being provided

to the Surface Transportation Board's Section of the Environmental Analysis upon filing of this Report.

(2) A written description of the right-of-way (including approximate widths, to the extent known) and the topography and urban and/or rural characteristics of the surrounding area:

The Superior to Reynolds, Nebraska line connects the communities of Superior, Hardy, Byron, Chester, Hubbell and Reynolds. The 2000 population of Superior was 2,055 and the 2002 estimate is 1,953. Hardy had a 2000 population of 179 and has an estimated 2002 population of 173. Byron's 2000 population was 144 and the 2002 estimate is 136. Chester had a population of 294 in 2000 and has an estimated population of 272 in 2002. Hubbell's population was 73 in 2000 and its estimated population in 2002 is 68. Reynolds population in 2000 was 88 and its estimated population in 2002 is 88. The overall population for this area during this two year period of time shows a decrease of approximately 5%.

This area of Nebraska is agricultural in nature with corn, milo, wheat and soybeans as the major crops. The adjoining land is flat to hilly. The right of way is 100 feet wide except for station grounds which can vary in width. This area of Nebraska has a relatively low population density but produces an abundance of grain and other crops.

(3) Good quality photographs (actual photographic prints, not photocopies) or railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

There are 12 bridges that are 50 years old or older in the immediate area of the abandonment. Photographs of the 12 bridges are attached to this report. See Exhibit U.

(4) The date(s) of construction of the structures, and the date(s) and extent of any major alterations, to the extent such information is known;

The dates of construction of the bridges are included with the photographs. See Exhibit U.

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action:

The right of way was acquired by the Republican Valley Railroad Company in 1880 and 1881. The Republican Valley Railroad Company was a predecessor to the Chicago Burlington and Quincy Railroad (CBQ). In 1970 the CBQ merged with other railroads to become part of the Burlington Northern Railroad (BN). In 1995 the BN merged with The Atchison Topeka and Santa Fe Railway Company to become part of The Burlington Northern and Santa Fe Railway Company (BNSF).

Since the line is out of service east of Hardy, no significant changes in carrier operations are expected.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is to be historic;

Typical documents in BNSF's possession concerning this abandonment may but do not necessarily include alignment maps showing the right-of-way and/or station maps. Such documents are too large for practical reproduction in this report, but can be furnished upon request, if they are available.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archaeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

To the best of BNSF's knowledge, the proposed abandonment should have no appreciable effects on any known sites or properties listed, or eligible for listing in the National Register of Historic Places. BNSF is not aware of any unique sites or structures with significant historical associations located within the right of way. The proposed abandonment should not affect any property listed on the National Register of Historic Places or otherwise identified as having historical significance in Kansas. See Exhibit V, letter from the Kansas State Historical Society. There will be no historic properties affected by the proposed abandonment. See Exhibit W, letter from the Nebraska State Historical Society.

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archaeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

BNSF is not aware of any known prior subsurface ground disturbance or fill or any other environmental conditions (naturally occurring or man-made) that might affect the recovery of archaeological resources.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael Smith', written over a horizontal line.

Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Date: April 6, 2004

CERTIFICATION PURSUANT TO 49 C.F.R.1105.7(c)

The Burlington Northern and Santa Fe Railway Company ("BNSF") by and through its authorized representative, Michael Smith, certifies that on March 18, 2004, copies of the foregoing Environmental and Historical Reports were sent by first class mail to the following agencies:

Ms. Victoria Rutson
Chief, SEA
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

L. Robert Puschendorf
Deputy State Historic Preservation Officer
State Historic Preservation Office
Nebraska State Historical Society
P.O. Box 82554
Lincoln, NE 68501-2554

Richard Pankratz
Deputy State Historic Preservation Officer
Kansas State Historical Society
6425 S.W. 6th Avenue
Topeka, KS 66615-1099

U.S. Department of the Interior
National Park Service
Land Resource Division
1849 C Street, N.W.
Washington, DC 20240

Timothy Spisak
Amarillo Field Office Manager
Bureau of Land Management
Amarillo Field Office
801 S. Fillmore Street, Suite 500
Amarillo, TX 79191-3545

Bill Carson
Reality Specialist
Bureau of Land Management
Newcastle Field Office
1101 Washington Blvd.
Newcastle, WY 82701

Bryan Simmons
Aquatic/Terrestrial Ecologist
Environmental Services Section
Kansas Department of Wildlife & Parks
512 SE 25th Avenue
Pratt, KS 67124

Frank Albrecht
Assistant Division Administrator
Reality and Environmental Services
Division
Nebraska Game and Parks Commission
2200 N. 33rd Street
Lincoln, NE 68503

Keith Tillotson
Senior Project Manager
U.S. Army Corps of Engineers
Omaha District
Nebraska Regulatory Office – Kearney
1430 Central Avenue, Suite 4
Kearney, NE 68847-6856

Thomas McCabe
Regulatory Specialist
U.S. Army Corps of Engineers
Kansas State Regulatory Office
2710 NE Shady Creek Accs. Rd.
El Dorado, KS 67042

Richard Niemeier
Jefferson County Commissioner
411 4th Street
Fairbury, NE 68352-2536

Lawrence Traudt
Commissioner, Chair
Thayer County Board of Supervisors
P. O. Box 208
County Courthouse
Hebron, NE 68370-0208

Republic County Board of Commissioners
1815 M Street
County Courthouse
Belleville, KS 66935-2242

Nuckolls County Emergency Management
150 S Main St
Nelson, NE 68961

Don Robb
Nuckolls County Roads
P.O. Box 381
Nelson, NE 68961

Natural Resources Conservation Service
Nelson Service Center
175 East 4th
Nelson, NE 68961

Tomas Dominguez
State Conservationist
United States Department of Agriculture
Kansas Natural Resources Conservation
760 S. Broadway
Salina, Kansas 67401 - 4642

John McKee
Jefferson County Zoning Administration
313 South K Street
Fairbury, NE 68352

Chris Frye
Administrator
Thayer City Zoning
P.O. Box 27
Hebron, NE 68370

Arnold Brown
Commissioner, Chair
Nuckolls County Board of Commissioners
PO Box 366
County Courthouse
Nelson, NE 68961-0366

Timothy Scott Schmidt
Nuckolls County Attorney
PO Box 366
County Courthouse
Nelson, NE 68961-0366

John Mayberger
Resource Conservationist
Natural Resources Conservation Service
Fairbury Service Center
305 5th Street
Fairbury, NE 68352-2530

Natural Resources Conservation Service
Hebron Service Center
1220 South Ave
Hebron, NE 68370-1925

Steve Chick
State Conservationist
Natural Resources Conservation Service
Federal Building, 100 Centennial Mall No.
Lincoln, NE 68508-3866

Jess Crockford
Assistant State Conservationist
United States Department of Agriculture
Natural Resources Conservation Service
9 West 28th
Hutchinson, KS 67502-3453

Sharon Whitmore
Acting Nebraska Field Supervisor
U.S. Fish & Wildlife Service
Ecological Services
203 West Second Street
Grand Island, NE 68801

Dan Rosenthal
Public Transportation Engineer
Nebraska Department of Roads
PO Box 94759
Lincoln NE 68509

Kansas Department of Transportation
915 Harrison, Room 754
Docking State Office Building
Topeka, KS 66612-1568

Karl Mueledner, Director
Kansas Department of Health and
Environment
Division of Environment
Bureau of Water
1000 SW Jackson St., Suite 420
Topeka, KS 66612-1367

Edward McKay
National Geodetic Survey
NOAA - SSMC3
1315 East-West Highway
Silver Spring, MD 20914

William Gill
Kansas Field Supervisor
U.S. Fish and Wildlife Service
Kansas Field Office
315 Houston Street, Suite E
Manhattan, KS 66502

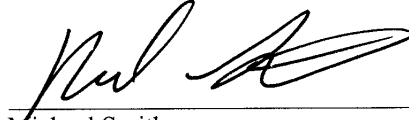
U.S. Fish & Wildlife Service
Regional Director
P.O. Box 25486
Denver, CO 80025

Nebraska Public Service Commission
300 The Atrium
1200 N Street
P.O. Box 94927
Lincoln, NE 68509-4927

Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-2425

Jim Yeggy
NPDES Permits Unit
Water Quality Division
Nebraska Department of
Environmental Quality
1200 "N" Street, Suite 400
PO Pox 98922
Lincoln, Nebraska 68509-8822

The required cover letters (pursuant to 49 C.F.R. 1105.11) are attached hereto. BNSF has consulted with all appropriate agencies in preparing the reports.

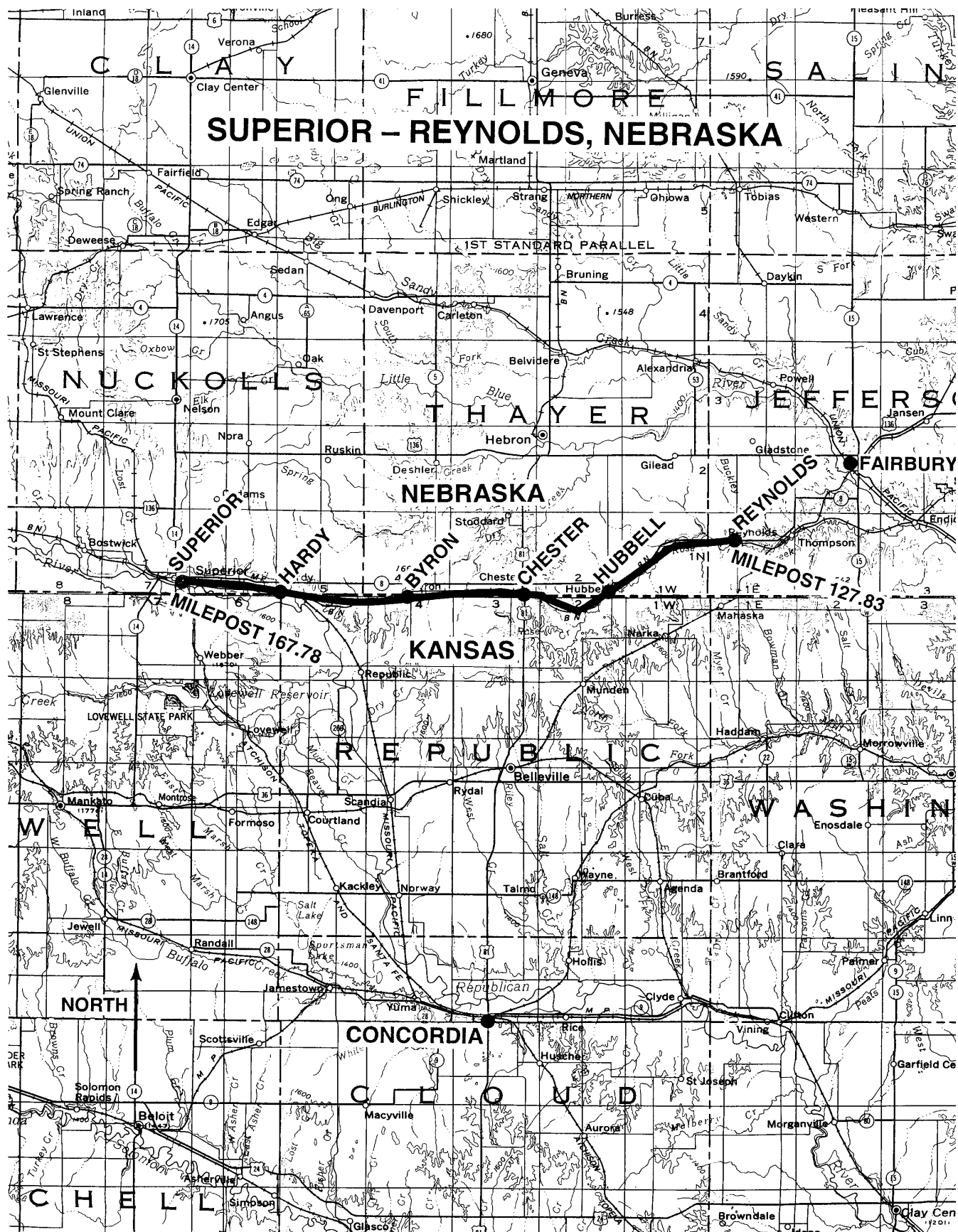
A handwritten signature in black ink, appearing to read 'Michael Smith', is positioned above a horizontal line.

Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Date: April 6, 2004

A

SUPERIOR - REYNOLDS, NEBRASKA



B

Freeborn & Peters

July 24, 2003

Richard Niemeier
Jefferson County Commissioner
411 4th Street
Fairbury, NE 68352-2536

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Superior, Nebraska to Reynolds, Nebraska***

Dear Mr. Niemeier:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority to abandon 39.95 miles of railroad line between Milepost 167.78 in Superior, Nebraska and Milepost 127.83 in Reynolds, Nebraska.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by August 29, 2003. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

Chicago

Springfield

C

Freeborn & Peters

July 24, 2003

Arnold Brown
Commissioner, Chair
Nuckolls County Board of Commissioners
PO Box 366
County Courthouse
Nelson, NE 68961-0366

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@freebornpeters.com

Chicago

Springfield

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Superior, Nebraska to Reynolds, Nebraska***

Dear Mr. Brown:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority to abandon 39.95 miles of railroad line between Milepost 167.78 in Superior, Nebraska and Milepost 127.83 in Reynolds, Nebraska.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by August 29, 2003. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

D

Freeborn & Peters

July 24, 2003

Lawrence Traudt
Commissioner, Chair
Thayer County Board of Supervisors
P. O. Box 208
County Courthouse
Hebron, NE 68370-0208

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

Chicago

Springfield

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Superior, Nebraska to Reynolds, Nebraska***

Dear Mr. Traudt:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority to abandon 39.95 miles of railroad line between Milepost 167.78 in Superior, Nebraska and Milepost 127.83 in Reynolds, Nebraska.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by August 29, 2003. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

E

Freeborn & Peters LLP

August 6, 2003

Republic County Board of Commissioners
1815 M Street
County Courthouse
Belleville, KS 66935-2242

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Superior, Nebraska to Reynolds, Nebraska***

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority to abandon 39.95 miles of railroad line between Milepost 167.78 in Superior, Nebraska and Milepost 127.83 in Reynolds, Nebraska. Part of the line is located in Republic County, Kansas.

As part of the environmental report BNSF needs to know whether or not the proposed action is consistent with local land use plans and if there are any alternate public uses for the corridor such as a recreational trail.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. Please provide this information by September 6, 2003. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn
Enclosure

Chicago

Springfield

F



**United States Department of Agriculture
Natural Resources Conservation Service**

9 West 28th
Hutchinson, KS 67502-3453

Phone: 620-663-3501
FAX: 620-663-3866
www.ks.nrcs.usda.gov

August 18, 2003

Mr. Brian Nettles
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677

Dear Mr. Nettles:

Thank you for the opportunity to review the proposed plans of the Burling Northern and Santa Fe Railway Company to abandon approximately 39.95 miles of railroad located in Republic County, Kansas.

The proposed project should have no effect on prime farmland. There are no other negative effects for which the Natural Resources Conservation Service is responsible for evaluating as defined by the Farmland Protection Policy Act.

Sincerely,

A handwritten signature in cursive script that reads "Jess F. Crockford".

JESS F. CROCKFORD
Assistant State Conservationist

cc:

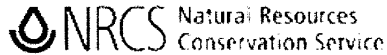
Harold L. Klaege, State Conservationist, NRCS, Salina, Kansas
Rodney D. Egbarts, Soil Conservationist, NRCS, Salina, Kansas
Terry K. Alstatt, District Conservationist, NRCS, Belleville, Kansas

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

An Equal Opportunity Provider and Employer

G

United States Department of Agriculture



175 East 4th Street
P.O. Box 307
Nelson, NE 68961
Phone: (402) 225-2311, Ext. 3

<http://www.ne.nrcs.usda.gov>

March 3, 2004

BRIAN NETTLES
311 SOUTH WACKER DRIVE
SUITE 3000
CHICAGO ILLINOIS 60606-6677

Dear Brian,

Our office received a letter in regard to the Burlington Northern and Santa Fe Railway Company Abandonment of Superior, Nebraska to Reynolds, Nebraska on February 20, 2004. Our office reviewed the area and felt that the proposed abandonment will not have any effect on prime agricultural lands.

If you have any questions, please contact me at (402) 225-2311, Ext. 3.

Sincerely,

A handwritten signature in cursive script that reads "Janet Valasek".

JANET VALASEK
District Conservationist

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

An Equal Opportunity Provider and Employer

FEB 23 2004

Freeborn & Peters LLP

February 20, 2004

Natural Resources Conservation Service
Nelson Service Center
175 East 4th
Nelson, NE 68961

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Superior, Nebraska to Reynolds, Nebraska***

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

Chicago

Springfield

Dear Sir or Madam:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority to abandon 39.95 miles of railroad line between Milepost 167.78 in Superior, Nebraska and Milepost 127.83 in Reynolds, Nebraska.

As part of the environmental report BNSF needs to know whether or not the proposed abandonment will have any effect on prime agricultural lands.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

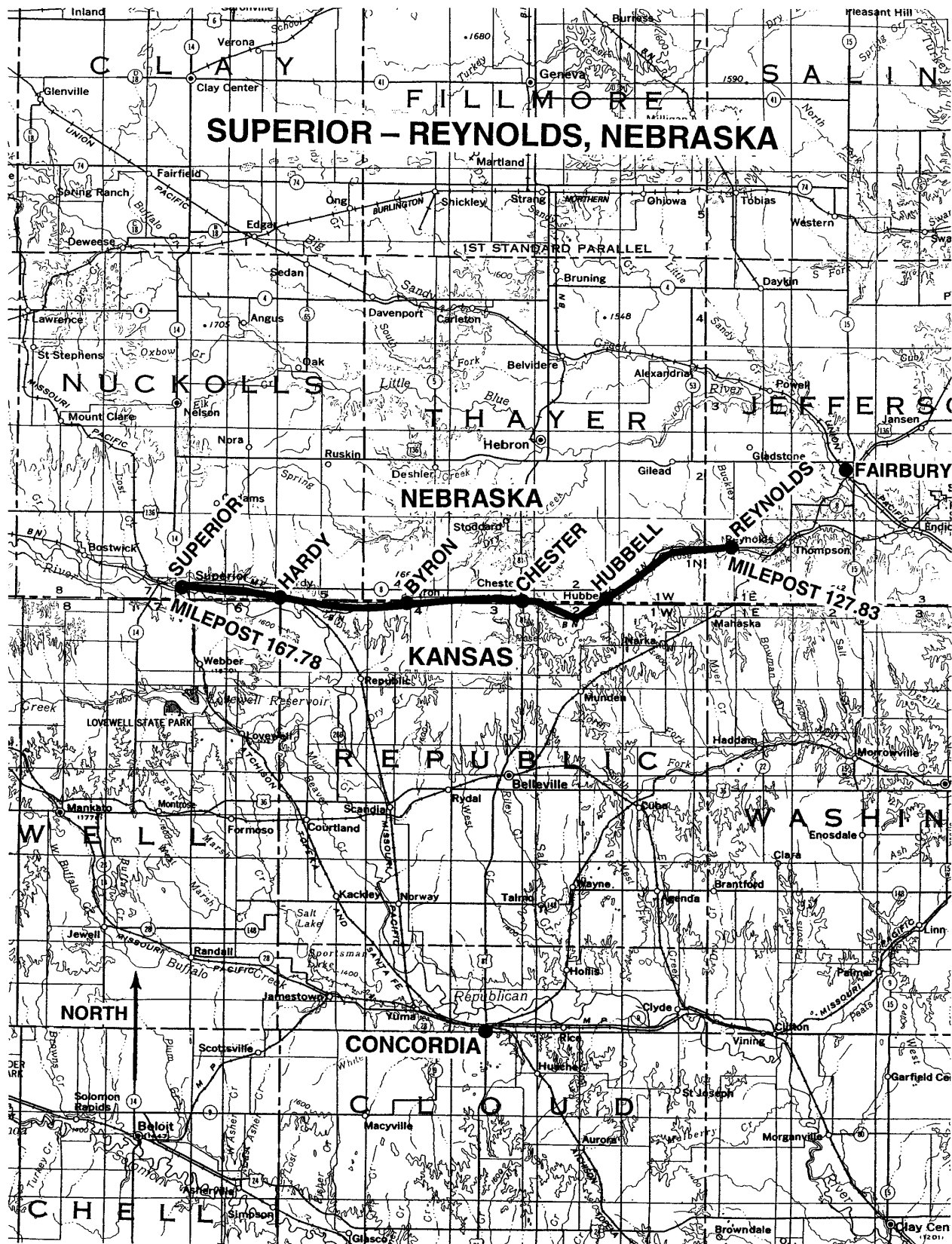
Thank you in advance for your cooperation.

Sincerely,



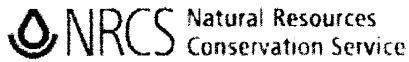
Brian Nettles

/bn
Enclosure



H

United States Department of Agriculture



Fairbury Field Office
514 C Street
Fairbury, NE 68352

Phone: 402-729-6134

<http://www.ne.nrcs.usda.gov>

March 1, 2004

Freeborn & Peters
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677

**Re: The Burlington Northern and Santa Fe Railroad Company Abandonment of Superior,
Nebraska to Reynolds, Nebraska**

Dear Mr. Nettles:

The proposed abandonment will have no effect on the prime agricultural lands.

Sincerely,

A handwritten signature in black ink, appearing to read "John Mayberger", is positioned above the typed name.

JOHN MAYBERGER
Resource Conservationist

I



Jefferson County Planning & Zoning

313 South K Street
Fairbury, Nebraska
68352-2706

Phone: 402-729-3602
Fax: 402-729-2016
Email: jeffcozone@diodecom.net

August 22, 2003

Freeborn & Peters
% Brian Nettles
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606-6677

Dear Mr. Nettles:

The plans that the BNSF Railroad has to abandon their line west of Reynolds in Jefferson County will not alter the flood plain area or there looks to be no plans to improve this property for trails or any other public use. With the recent flood as you know the cost would be too high to prepare this section for public use.

Sincerely,

John McKee
Jefferson Co. Zoning Administrator
313 South K Street
Fairbury, Ne. 68352
402-729-3602

J



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Nebraska Field Office
203 West Second Street
Grand Island, Nebraska 68801

July 28, 2003

Mr. Brian Nettles
Freeborn & Peters
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677

Dear Mr. Nettles:

This responds to your July 24, 2003, letter requesting comments from the U.S. Fish and Wildlife Service on a proposal by the Burlington Northern and Santa Fe Railway Company to abandon 39.95 miles of railroad line between Milepost 167.78 in Superior, Nebraska and Milepost 127.83 in Reynolds, Nebraska. These comments are provided as technical assistance and predevelopment consultation and do not constitute a Service report under authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) on any required Federal environmental review or permit.

The Service has responsibility, under a number of authorities, for conservation and management of fish and wildlife resources. Chief among the federal statutes with which our office deals are the Coordination Act, Endangered Species Act of 1973, and the National Environmental Policy Act. The Coordination Act requires that fish and wildlife resources be given equal consideration in the planning, implementation, and operation of Federal and federally funded, permitted, or licensed water resource developments. Section 7 of the Endangered Species Act of 1973 outlines procedures for interagency consultations on the effects of Federal actions on federally listed threatened and endangered species. The Service participates in scoping and review of actions significantly affecting the quality of the environment under authority of the National Environmental Policy Act. In addition to these statutes, the Service has authority under several other legislative, regulatory, and executive mandates to promote conservation of fish and wildlife resources for the benefit of the public.

In Nebraska, the Service has special concerns for migratory birds, endangered and threatened species, and other important fish and wildlife resources. We also are concerned about any impacts on Federal and State wildlife refuges and management areas and other public lands, as well as to other areas that support sensitive habitats. Habitats frequently used by important fish and wildlife resources are wetlands, streams, and riparian (streamside) woodlands. Special attention is given to proposed developments that include modification of wetlands, or stream alteration, or contamination of important habitats. The Service recommends ways to avoid, minimize, rectify, reduce, or compensate for damaging impacts to important fish and wildlife resources and their habitats that may be attributed to land and water resource development proposals.

We have reviewed the plans for the proposed project and offer the following comments:

- a. The proposed project does not appear to impact federal fish and wildlife management facilities.
- b. No federally listed or proposed threatened or endangered species are expected to occur within the project area.
- c.. If wetlands or streams will be impacted by the proposed project, a Department of the Army permit from the U.S. Army Corps of Engineers may be needed. The Service recommends that impacts to wetlands and streams be avoided or minimized. If unavoidable impacts are to occur to aquatic habitats, the Service recommends that compensation (i.e., restoration of a degraded wetland or creation) occur for like wetland type at a ratio of 1.5:1 (acres of wetlands restored/created to acres of wetlands impacted). For unavoidable impacts to streams, the Service recommends that the pattern, profile, and dimension be replaced on a 1:1 basis. Additionally, compensation for impacts to riparian habitats should occur at a minimum ratio of 3:1 (i.e., acres of riparian habitat replaced for acres of riparian habitat impacted). The 3:1 ratio is based on the loss of the habitat and the amount of time that will be required for planted trees to reach maturity.
- d. Under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712: Ch. 128 *as amended*) construction activities in grassland, wetland, and woodland habitats, and those that occur on bridges (e.g., which may affect swallow nests on bridge girders) that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests should be avoided. Although the provisions of the MBTA are applicable year-round, most migratory bird nesting activity in Nebraska occurs during the period April 1 to July 15. However, some migratory birds are known to nest outside of the aforementioned primary nesting season period. For example, raptors can be expected to nest in woodland habitats during February 1 through July 5, whereas sedge wrens which occur in some wetland habitats normally nest from July 15 to September 10. If the proposed construction project is planned to occur during the primary nesting season or at any other time which may result in the take of nesting migratory birds, the Service recommends that the project proponent (or construction contractor) arrange to have a qualified biologist conduct a field survey of the affected habitats and structures to determine the absence or presence of nesting migratory birds. Surveys must be conducted during the nesting season. It is further recommended that the results of field surveys for nesting birds, along with information regarding the qualifications of the biologist(s) performing the surveys, be thoroughly documented and that such documentation be maintained on file by the project proponent (and/or construction contractor) for potential review by the Service (if requested) until such time as construction on the proposed project has been completed. The Service's Nebraska Field Office should be contacted immediately for further guidance if a field survey identifies the existence of one or more active bird nests which cannot be avoided by the planned construction activities. Adherence to these guidelines will help to avoid the unnecessary take of migratory birds and the possible need for law enforcement action.

Based upon the submitted information, we have no objection to the proposal as currently planned. However, should the plans be modified, we recommend that you reinitiate coordination with this office.

Should you have any further questions, please contact Mr. Wally Jobman within our office at (308)382-6468, extension 16. Thank you for the opportunity to offer comments.

Sincerely,

A handwritten signature in black ink that reads "Sharon Whitmore". The signature is written in a cursive, flowing style.

Sharon Whitmore
Acting Nebraska Field Supervisor

cc: NGPC; Lincoln, NE (Attn: Julie Godbersen)

K



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Kansas Field Office
315 Houston Street, Suite E
Manhattan, Kansas 66502-6172

August 28, 2003

Brian Nettles
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606-6677

RE: BNSF Line Abandonment, Nebraska and Kansas

Dear Mr. Nettles:

This is in response to your letter of August 6, 2003, describing a Burlington Northern and Santa Fe Railway Company proposed abandonment of 39.95 miles of existing railway line between Superior and Reynolds, Nebraska. A part of this line also occurs in Republic County, Kansas. We have reviewed this proposal and conclude that there should be no adverse impacts to fish and wildlife resources, including threatened and endangered species. Therefore, the U.S. Fish and Wildlife Service has no objection to the proposal as planned.

The Service encourages the BNSF Railway Company to keep the right-of-way in a natural condition for the benefit of native wildlife, plants, and the public. You may wish to contact the National Park Service, Omaha, Nebraska, 402-221-3350, for more information on the "Rails to Trails" Program. You may also wish to contact the Kansas Department of Wildlife and Parks in Pratt, Kansas (316-672-5911) to determine their interest in acquiring a nature trail.

Thank you for this opportunity to comment on this proposal.

Sincerely,

William H. Gill
Field Supervisor

cc: FWS, Grand Island, NE (Field Supervisor)
KDWP, Pratt, KS (Environmental Services)

WHG/dwm

KANSAS

DEPARTMENT OF WILDLIFE AND PARKS
September 3, 2003

KATHLEEN SEBELIUS, GOVERNOR

Mr. Brian Nettles
Freeborn and Peters LLP
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606-6677

Ref: D2.0401a
Republic
MP 127.83-167.78
Track: 20030478

Dear Mr. Nettles:

We have reviewed preliminary railway abandonment of the Burlington Northern Santa Fe Railway Company involving 39.95 miles between Milepost 167.78 and 127.83 from Superior, Nebraska to Reynolds Nebraska, part of the line being in Republic County, Kansas. The project was reviewed for potential impacts on crucial wildlife habitats, current state-listed threatened and endangered species and species in need of conservation and public recreation areas for which this agency has some administrative authority.

We have no objections to this project as it is currently designed. We would only recommend to minimize any existing instream construction activities while implementing standard erosion control BMP's, temporary weed-free seeding/mulching to protect water quality during construction, and the use of native grasses and forbs to permanently revegetate any and all areas disturbed by abandonment activities.

Results of our review indicate there will be no significant impacts to crucial wildlife habitats; therefore, no special mitigation measures are recommended. The project will not impact any public recreational areas, nor could we document any potential impacts to currently listed threatened or endangered species or species in need of conservation. No Department of Wildlife and Parks permits or special authorizations will be needed if construction is started within one year, and no design changes are made in the project plans. Since the Department's recreational land obligations and the State's species listings periodically change, if construction has not started within one year of this date, or if design changes are made in the project plans, the project sponsor must contact this office to verify continued applicability of this assessment report. For our purposes, we consider construction started when advertisements for bids are distributed.

Thank you for the opportunity to provide these comments and recommendations.

Sincerely,



Nebraska Game and Parks Commission

2200 N. 33rd St. / P.O. Box 30370 / Lincoln, NE 68503-0370

Phone: 402-471-0641 / Fax: 402-471-5528 / www.outdoornebraska.org

July 29, 2003

Brian Nettles
Freeborn & Peters
311 South Wacker Drive, Suite 3000
Chicago, IL 60606-6677

RE: Abandonment of Burlington Northern Santa Fe right-of-way from Superior
(M.P.167.78) and Reynolds (M.P. 127.83), Nebraska

Dear Mr. Nettles:

Nebraska Game & Parks Commission staff members have reviewed the proposed action identified above. Approximately 95 percent of the nearly 40 miles of the proposed abandonment is within Nebraska, mainly in Thayer County. There are no wildlife refuges/sanctuaries adjacent to the proposed abandonment. Records and maps of the Nebraska Natural Heritage Program indicate that no threatened/endangered species and designated or proposed critical habitat are located on or adjacent to the right-of-way proposed for abandonment.

Please advise if further review is required, or changes are made in what is outlined in your letter of July 24, 2003.

Sincerely,

Frank J. Albrecht
Assistant Division Administrator
Realty & Environmental Services Division

N

Nettles, Brian

From: Bill_Carson@blm.gov
Sent: Tuesday, July 29, 2003 11:46 AM
To: bnettles@freebornpeters.com
Subject: BNSF Abandonment from Superior, NE to Reynolds, NE

We have evaluated the proposed Burlington Northern and Santa Fe Railway Company Abandonment from Superior, Nebraska to Reynolds, Nebraska. We found that the proposed abandonment will not affect any public lands (Federal lands) administered by the Bureau of Land Management.

Bill Carson
Realty Specialist
Bureau of Land Management
Newcastle Field Office
1101 Washington Blvd
Newcastle, WY 82701
307-746-6607

O



IN REPLY REFER TO:
2800 (NM0930) P

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Amarillo Field Office - Helium Operations

801 South Fillmore, Suite 500

Amarillo, Texas 79101-3545

www.nm.blm.gov

August 12, 2003

Mr. Brian Nettles
Freeborn and Peters
311 South Wacker Drive
Chicago, IL 60606-6677

Dear Mr. Nettles:

With regards to the BNSF's plans to file an exemption to abandon its line of railroad between Milepost 167.78 in Superior, Nebraska and Milepost 127.83 in Reynolds, Nebraska the Bureau of Land Management has no public lands or minerals that would be impacted on the portion located in Republic County, Kansas. However, the state of Nebraska is not within this office's jurisdictional boundaries, and you should contact BLM, Wyoming State Office, PO Box 1828, Cheyenne, Wyoming, for information on that portion of the subject line in Nebraska.

Sincerely,

Timothy R. Spisak
Amarillo Field Office Manager

P

Freeborn & Peters

July 24, 2003

Jim Yeggy
NPDES Permits Unit
Water Quality Division
Nebraska Department of Environmental
Quality
1200 "N" Street
P.O. Box 98922
Lincoln, NE 68509-8822

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Superior, Nebraska to Reynolds, Nebraska***

Dear Mr. Yeggy:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority to abandon 39.95 miles of railroad line between Milepost 167.78 in Superior, Nebraska and Milepost 127.83 in Reynolds, Nebraska.

As part of the environmental report BNSF needs to know whether or not this action will be consistent, with Federal, State or local water quality standards. Also, please state whether or not Section 402 and/or NPDES are required as a result of the proposed abandonment.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact. No placement of dredge or fill material in any inland waterways is anticipated to result from abandonment and/or salvage.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

/bn

Chicago

Springfield

Q

Freeborn & Peters LLP

August 6, 2003

Karl Mueldener, Director
Kansas Department of Health and
Environment
Division of Environment
Bureau of Water
1000 SW Jackson St., Suite 420
Topeka, KS 66612-1367

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@
freebornpeters.com

**Re: *The Burlington Northern and Santa Fe Railway Company Abandonment
of Superior, Nebraska to Reynolds, Nebraska***

Dear Mr. Mueldener:

BNSF plans on filing with the Surface Transportation Board ("STB") a Petition for Exemption seeking authority to abandon 39.95 miles of railroad line between Milepost 167.78 in Superior, Nebraska and Milepost 127.83 in Reynolds, Nebraska. Part of the line is located in Republic County, Kansas.

As part of the environmental report BNSF needs to know whether or not this action will be consistent, with Federal, State or local water quality standards. Also, please state whether or not Section 402 and/or NPDES permits are required as a result of the proposed abandonment.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact. No placement of dredge or fill material in any inland waterways is anticipated to result from abandonment and/or salvage.

For your reference I have enclosed a map of the above referenced railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,



Brian Nettles

Chicago

Springfield



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NEBRASKA REGULATORY OFFICE - KEARNEY
1430 CENTRAL AVENUE SUITE 4
KEARNEY, NE 68847-6856

August 18, 2003

Mr. Brian Nettles
Freeborn & Peters
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606-6677

Dear Mr. Nettles:

This letter pertains to the proposal of the Burlington Northern and Santa Fe Railway Company to abandon 39.95 miles of track between Milepost 167.78 in Superior, Nebraska and Milepost 127.83 in Reynolds, Nebraska.

After reviewing the materials you provided, the project will not require a Department of the Army permit.

If, in the future, you plan to place fill material in any waters of the United States please provide this office with an application for review for possible permit requirements.

Although a Department of the Army permit pursuant to Section 404 of the Clean Water Act and/or Section 10 of the River and Harbor Act is not required for this project, this does not eliminate the requirement that you obtain other applicable Federal, State, Tribal and/or Local permits as required.

If you have any questions regarding this matter, please feel free to contact me at the above address or call (308) 234-1403 and refer to file number NE 03-11023.

Sincerely,

A handwritten signature in cursive script, reading "Keith Tillotson", is positioned above the typed name.

Keith Tillotson
Senior Project Manager

Copy Furnished (with enclosures):

CENWK-CO-R



DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
STATE REGULATORY PROGRAM OFFICE - KANSAS
2710 N.E. SHADY CREEK ACCESS ROAD
EL DORADO, KANSAS 67042

REPLY TO
ATTENTION OF:

August 29, 2003

Kansas State Regulatory Office
(200302121)
(Republic, KS, NPR)

Mr. Brian Nettles
Freeborn & Peters
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606-6677

Dear Mr. Nettles:

This is in response to your letter dated August 6, 2003, requesting a Department of the Army (DA) permit determination concerning the plans of Burlington Northern and Santa Fe Railway Company to abandon 39.95 miles of railroad line. A portion of the railroad line is located within Republic County, Kansas.

The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 1344). The implementing regulation for this Act is found at 33 CFR 320-330.

We have reviewed the information furnished and based upon your description of the project have determined that the proposed activity will not involve the discharge of dredged or fill material in waters of the United States. Therefore, Department of the Army permit authorization is not required. Other Federal, state and/or local permits may be required, however, and you should verify this yourself.

Mr. Thomas A. McCabe, Regulatory Specialist, reviewed the information furnished and made this determination. If you have any questions concerning this matter, please feel free to contact Mr. McCabe at 316-322-8247 (FAX 316-322-8259).

~~Enclosures~~

Copies Furnished:

Environmental Protection Agency, Water Resources Protection Branch wo/enclosure
Kansas Department of Wildlife and Parks wo/enclosure
Kansas Department of Agriculture wo/enclosure

T

Thayer County Zoning Administrator



P. O. Box 27 ♦ Hebron , Nebraska 68370

August 22, 2003

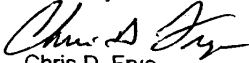
Freeborn & Peters
311 South Wacker Dr.
Suite 3000
Chicago, Illinois 60606

Mr. Brian Nettles

I am responding to the letter that you addressed to the Thayer County Clerk, Marilyn Free. As the Zoning Administrator I also serve as the Flood Plain Manager for Thayer County. As you can see from the enclosure I asked for assistance from the Dept. of Natural Resources in answering your letter.

Our response is that we do not feel that the proposed abandonment will have any effect on a 100-year floodplain.

Sincerely



Chris D. Fry
Administrator
Thayer County Zoning

STATE OF NEBRASKA



DEPARTMENT OF NATURAL RESOURCES
Roger K. Patterson
Director

Mike Johanns
Governor

August 6, 2003

IN REPLY REFER TO:

Chris Frye
Zoning Administrator
P.O. Box 27
Hebron, NE 68370

RE: Burlington Northern Railroad Abandonment in Thayer County

Dear Mr. Frye:

The Nebraska Department of Natural Resources does not feel that the abandonment of a railroad line is an actionable impact for floodplain management. We are assuming that the bridges or other river/stream crossings are not going to be affected. If this is not the case, we will need to review this action again.

If you have any questions about this letter, please call me at (402) 471-3957.

Sincerely,

A handwritten signature in cursive script that reads "Steve McMaster".

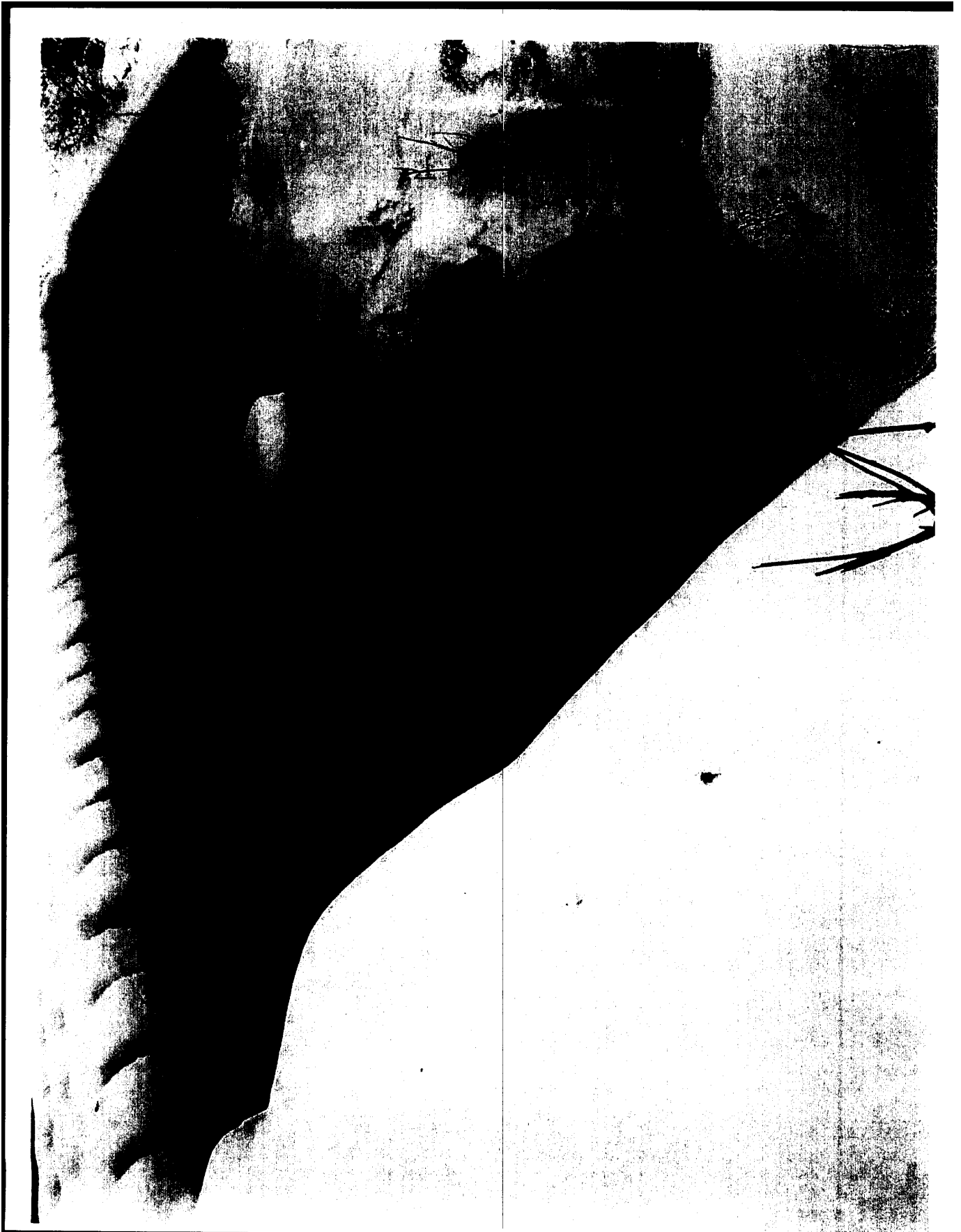
Steve McMaster
Water Resources Planner

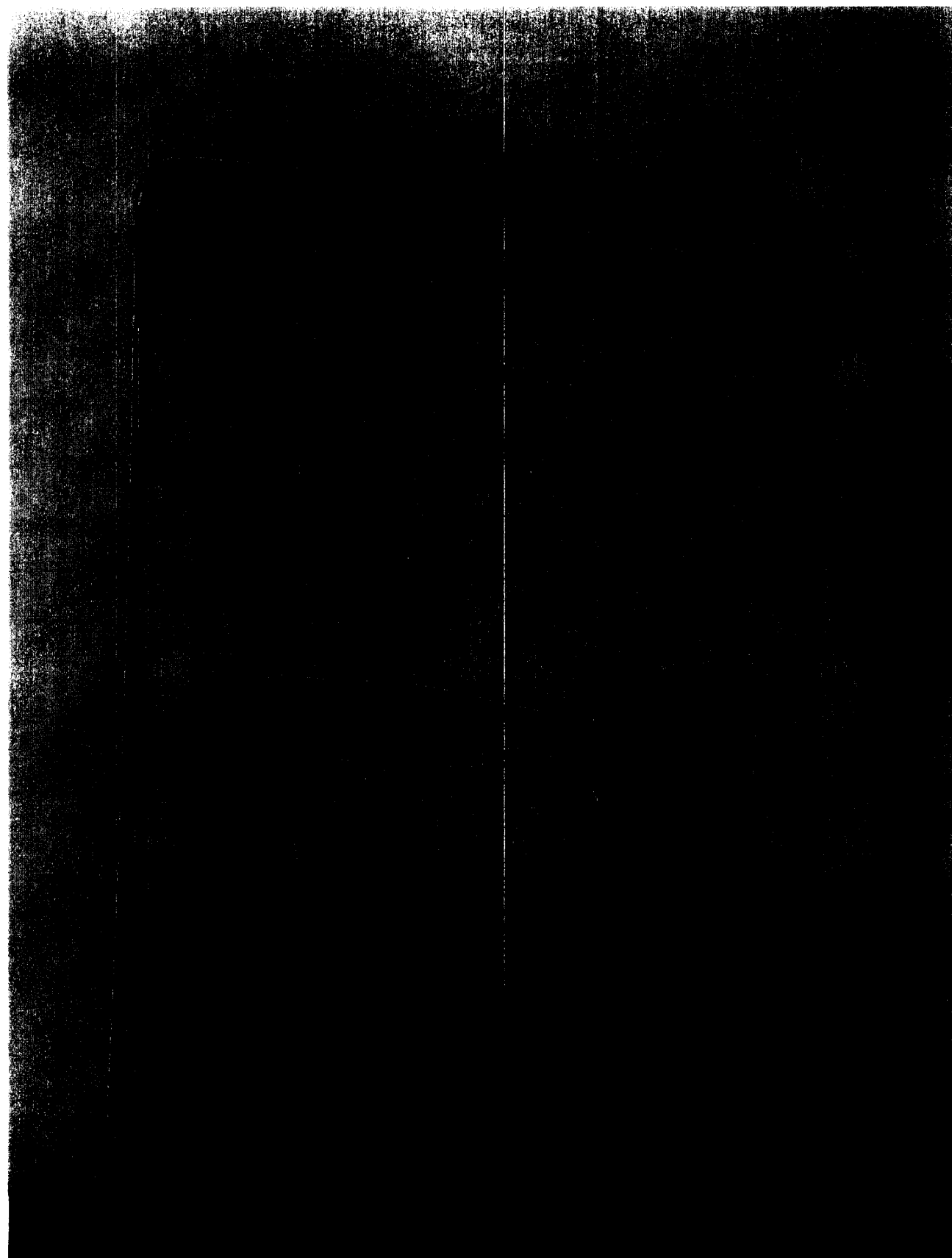
U

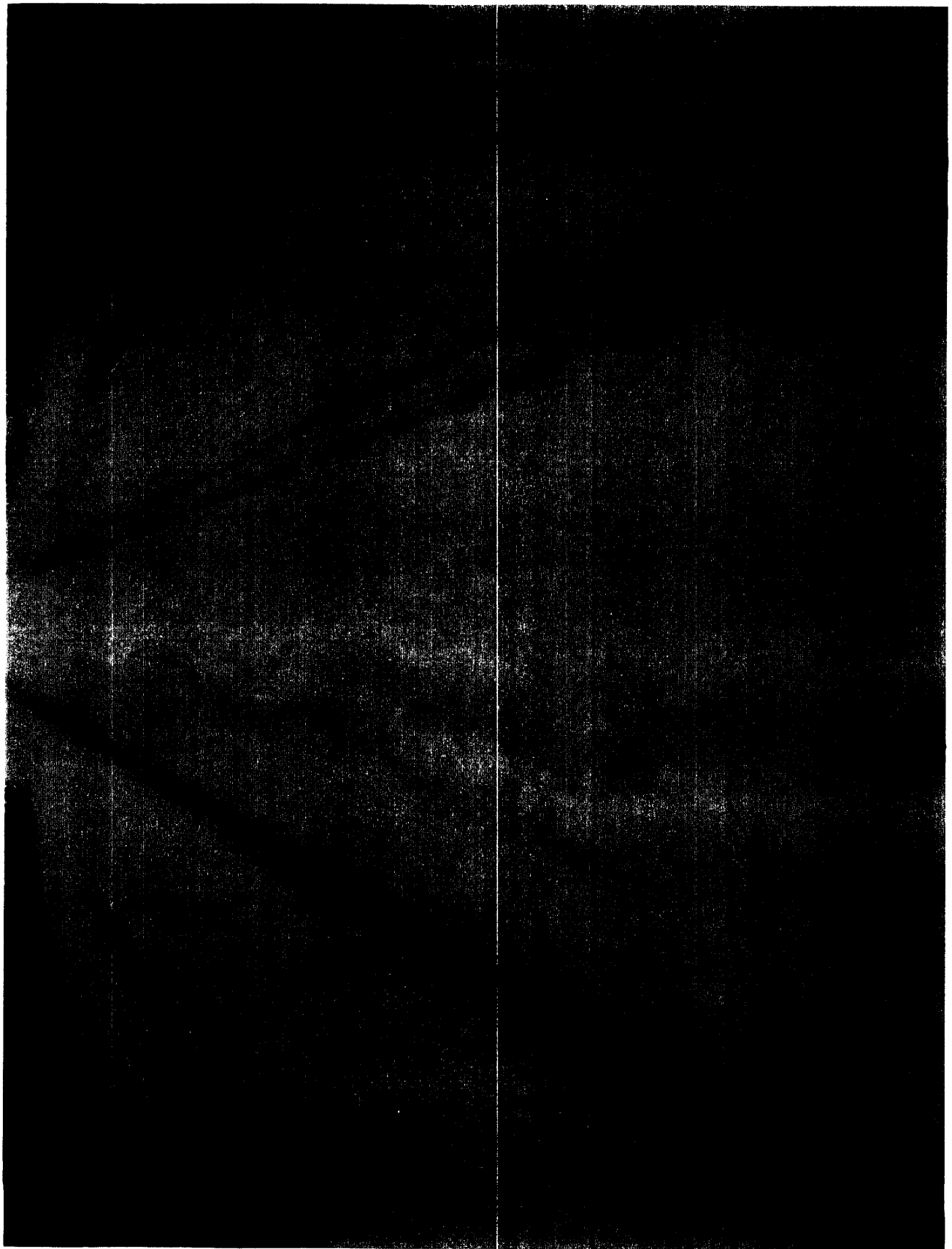
Abandonment Documentation (M.P. 127.83 to M.P. 167.78)

List of Bridges

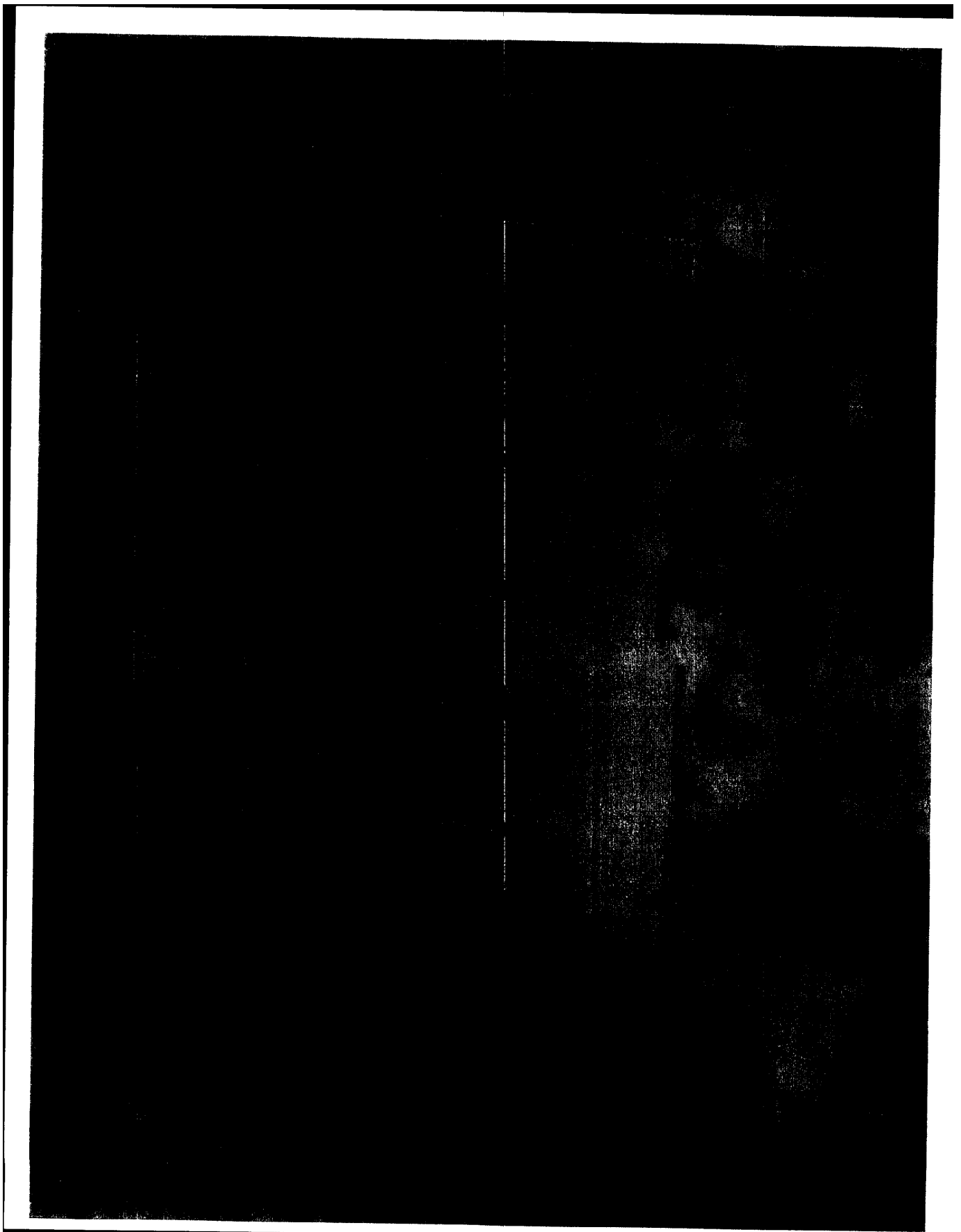
Bridge: 130.75	Built: 1905	Length:	40.0'	Height: 14.0'	Description: 2-20 Beam	Obstacle: Drainage
Bridge: 131.58	Built: 1924	Length:	44.0'	Height: 17.0'	Description: 1-16, 2-14 Slab	Obstacle: Stock Pass
Bridge: 133.98	Built: 1913	Length:	133.0'	Height: 28.0'	Description: 1-60 DPG, 2-20, 2-16 Slab	Obstacle: Rose Creek
Bridge: 135.20	Built: 1915	Length:	80.0'	Height: 19.0'	Description: 5-16 Slab	Obstacle: Drainage
Bridge: 137.90	Built: 1916	Length:	116.0'	Height: 24.0'	Description: 2-14, 2-20, 3-16 Slab	Obstacle: Drainage
Bridge: 138.72	Built: 1893	Length:	100.0'	Height: 30.0'	Description: 2-25, 1-50 DPG	Obstacle: Rose Creek
Bridge: 139.37	Built: 1905	Length:	100.0'	Height: 26.0'	Description: 2-25, 1-50 DPG	Obstacle: Rose Creek
Bridge: 142.02	Built: 1930	Length:	106.0'	Height: 35.0'	Description: Public OH	Obstacle: Bridge
Bridge: 161.12	Built: 1907	Length:	80.0'	Height: 19.0'	Description: 4-20 Slab	Obstacle: Drainage
Bridge: 162.04	Built: 1916	Length:	118.0'	Height: 24.0'	Description: 3-20, 4-16, 1-14 Slab	Obstacle: Forsha Creek
Bridge: 164.02	Built: 1913	Length:	64.0'	Height: 9.0'	Description: 4-16 Slab	Obstacle: Spring Creek
Bridge: 165.76	Built: 1919	Length:	116.0'	Height: 19.0'	Description: 1-20, 6-16 Slab	Obstacle: Crosby Creek





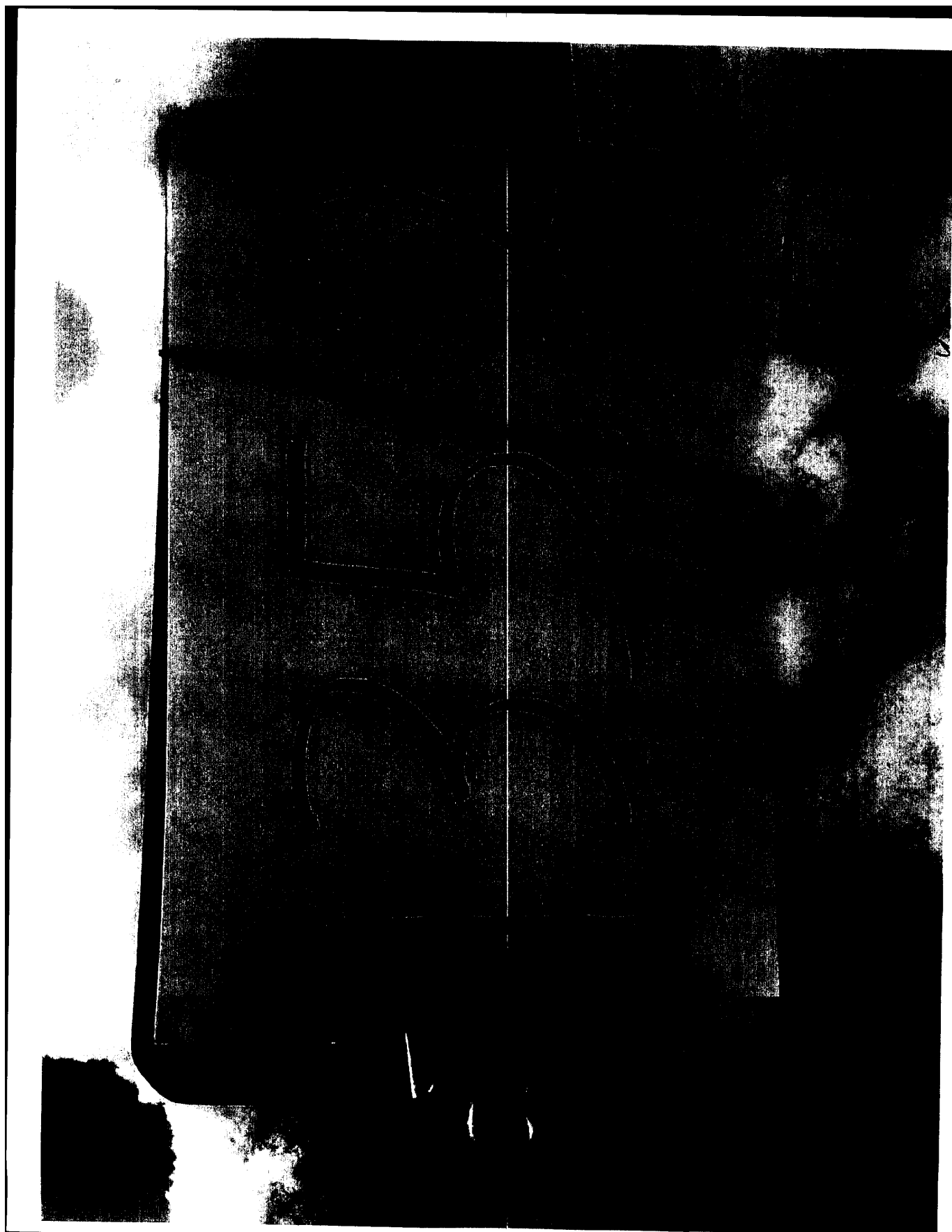




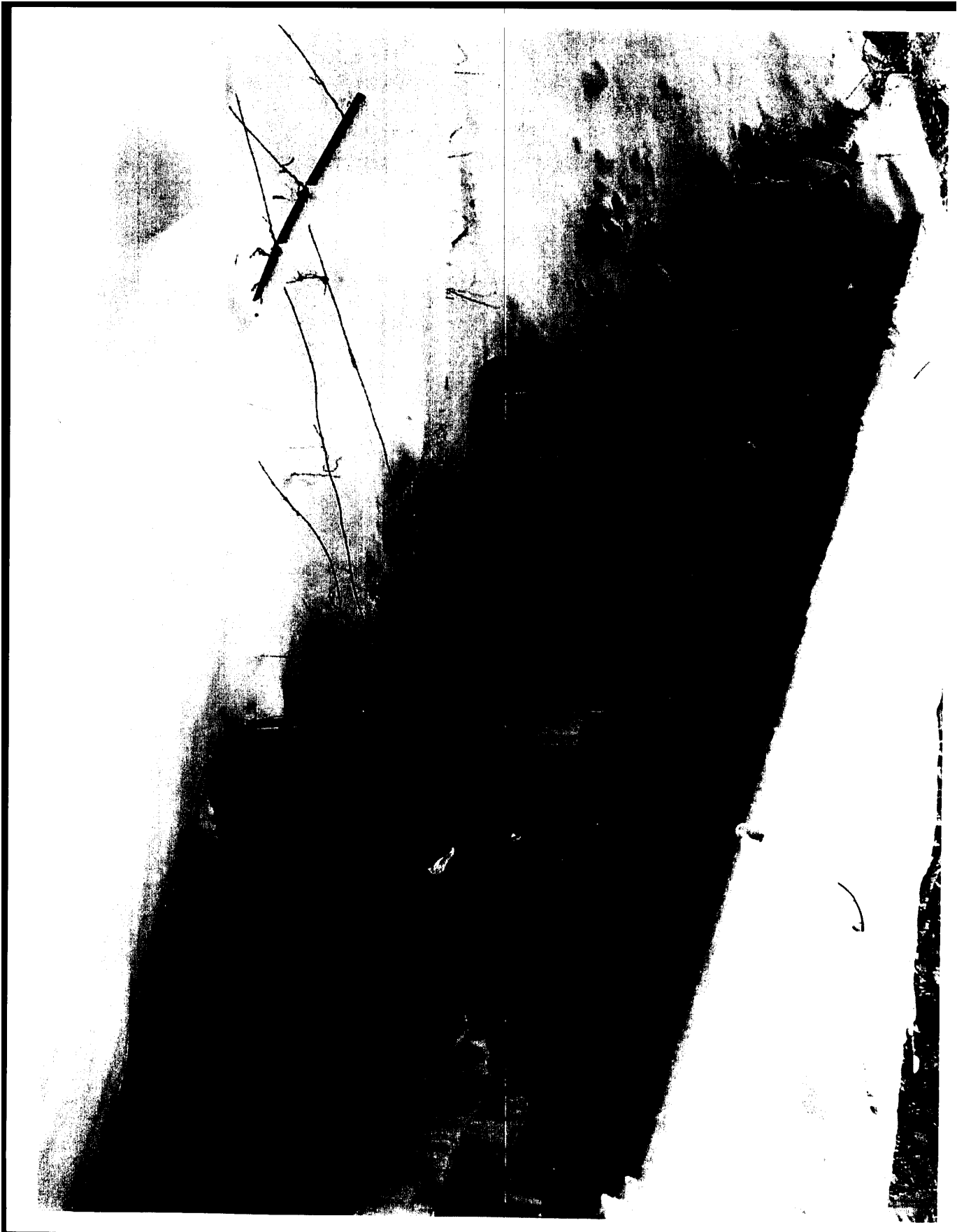


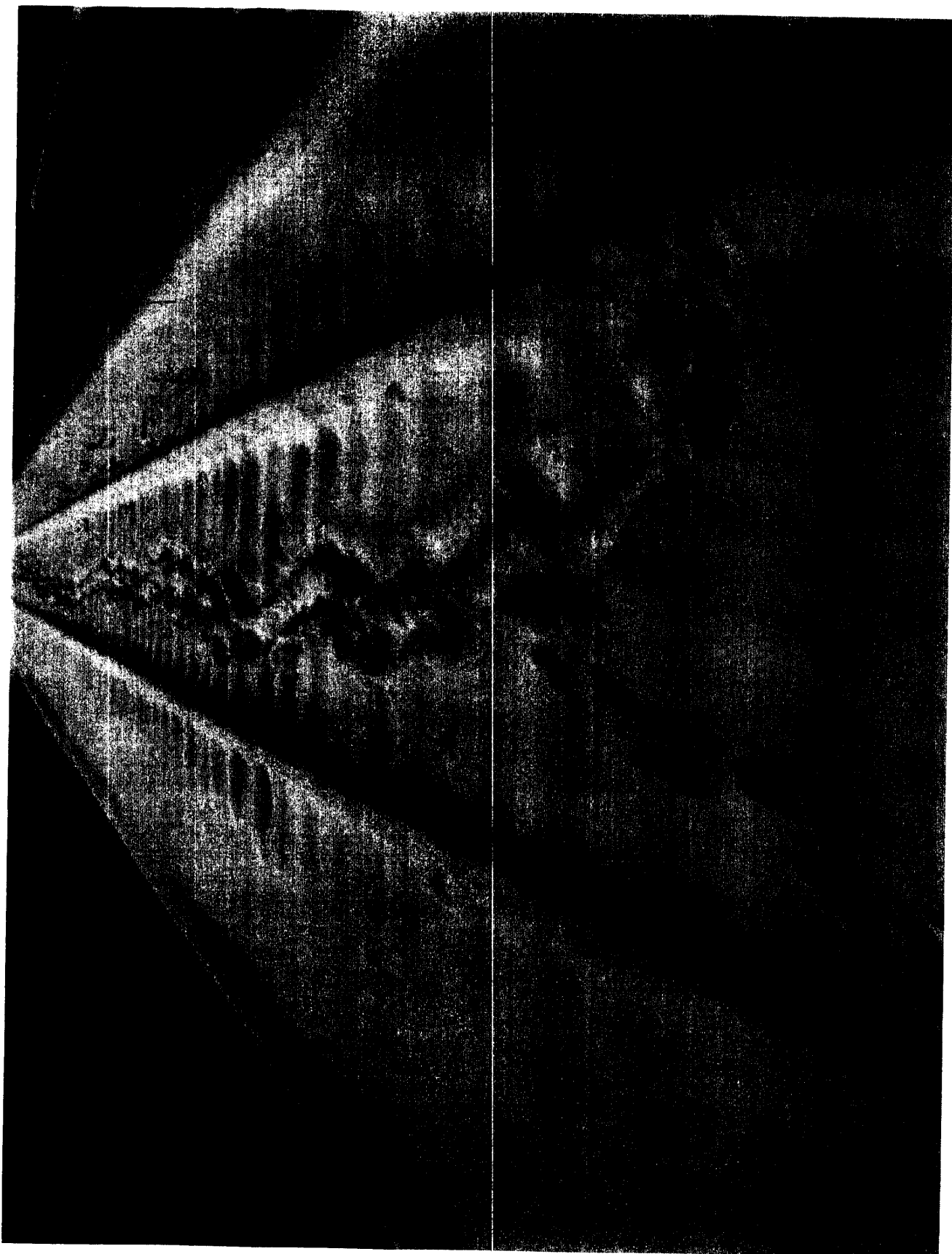


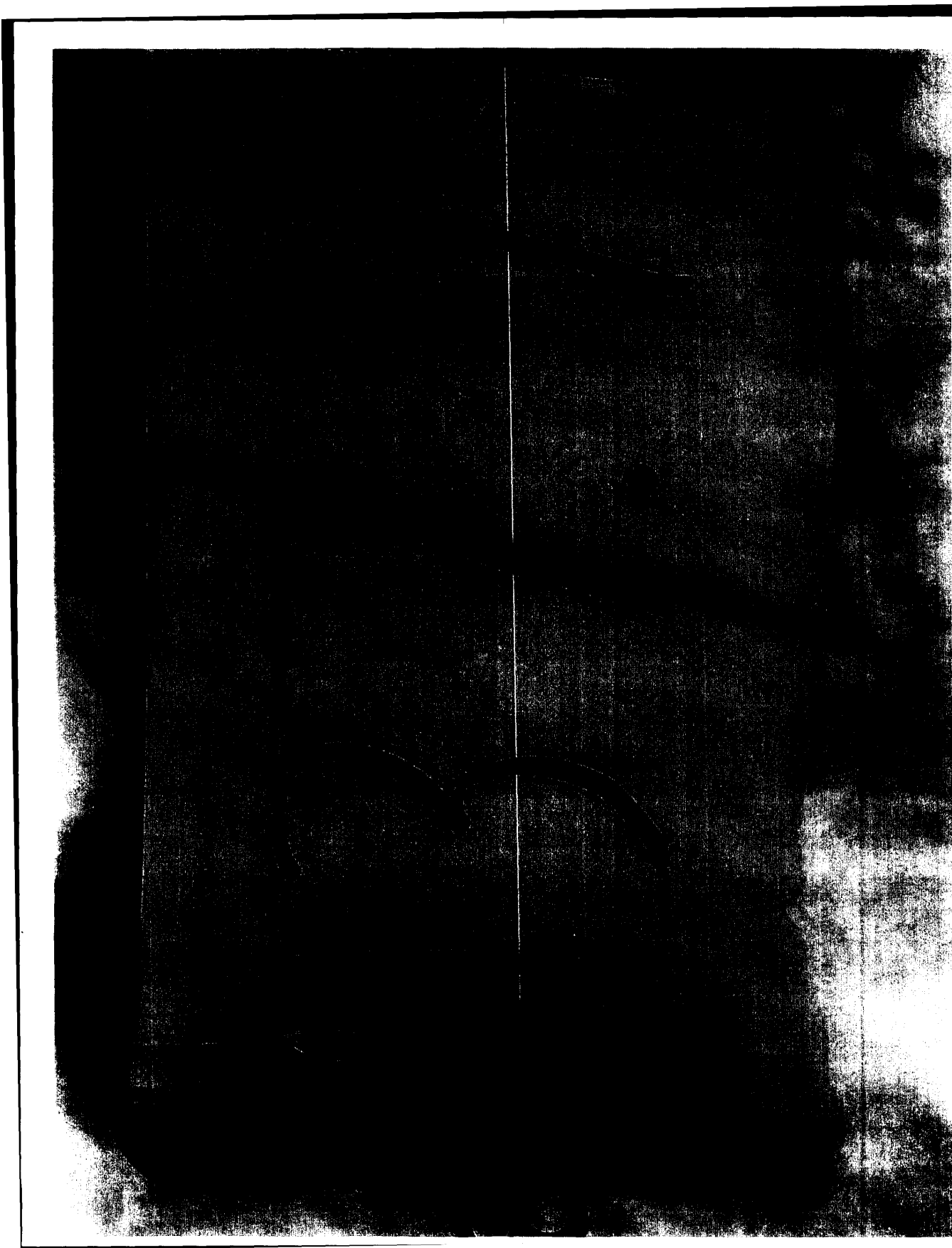




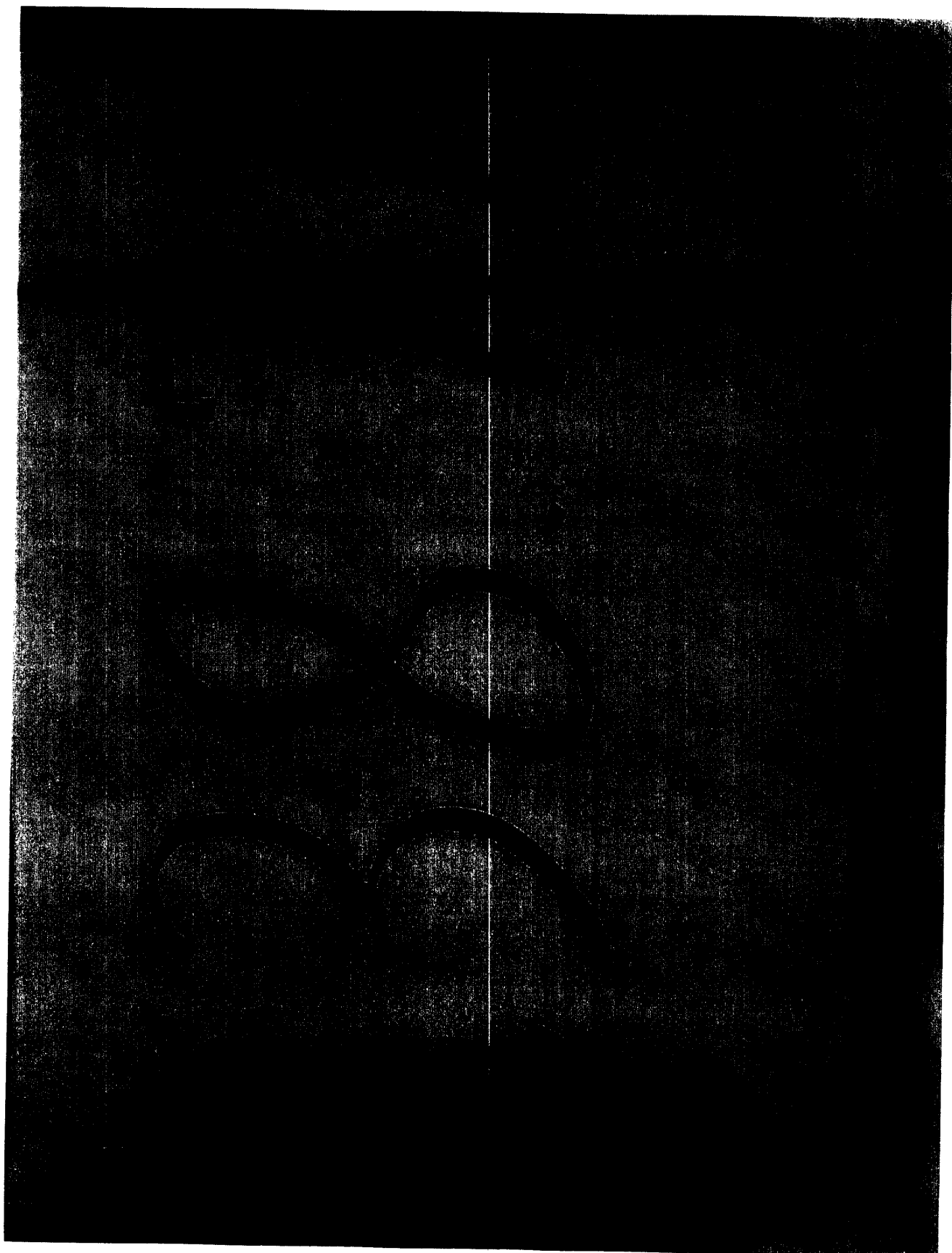










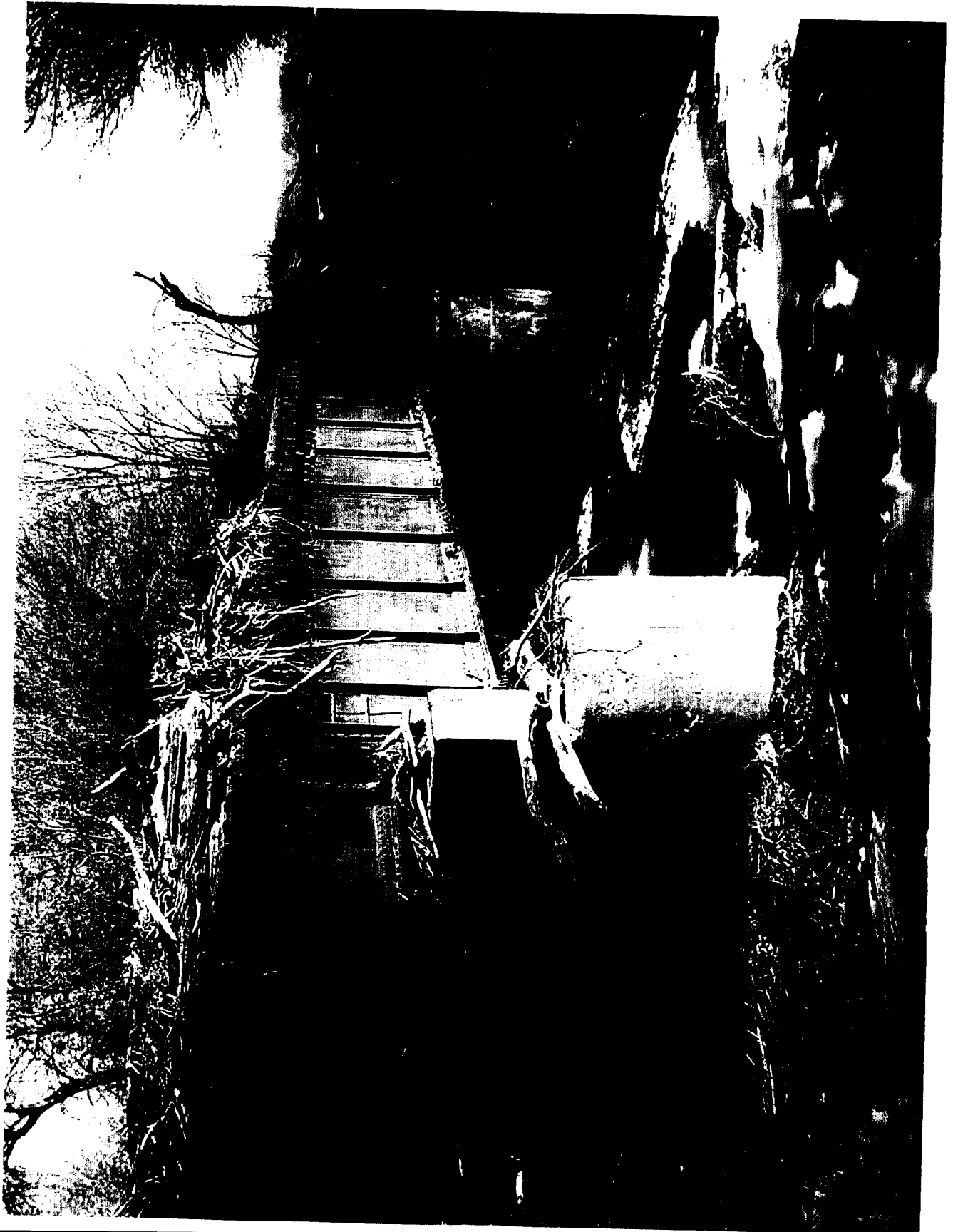




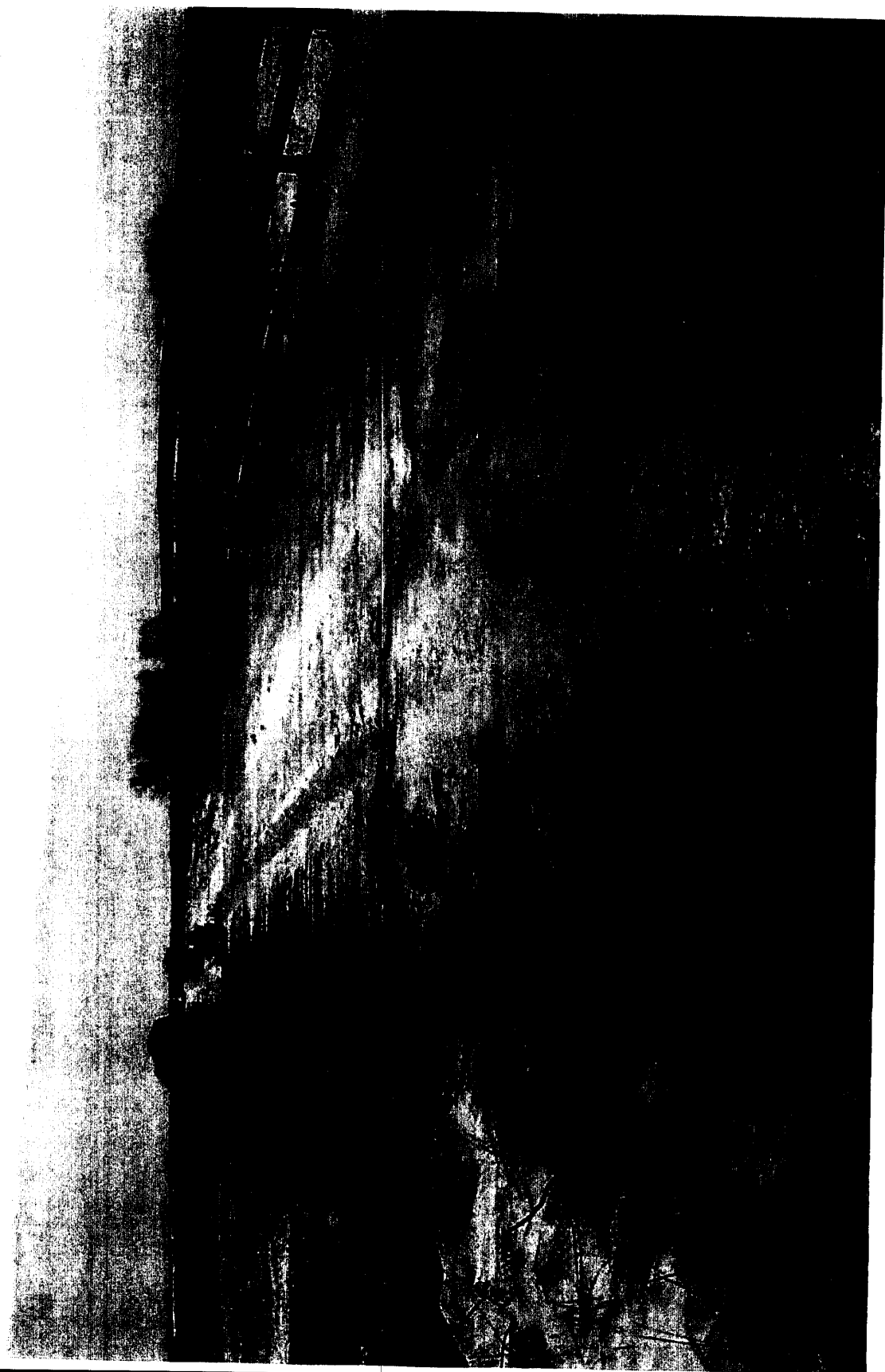


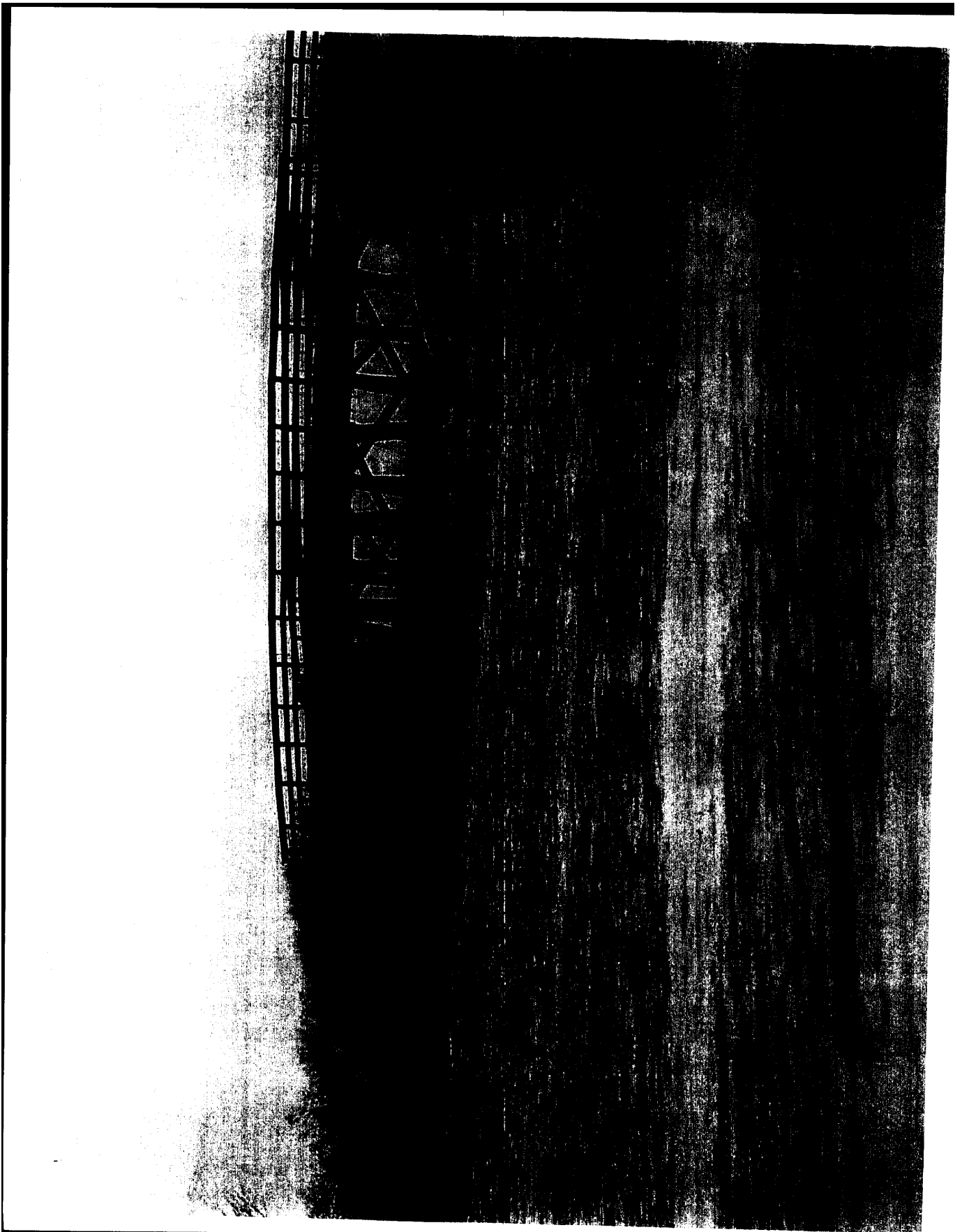


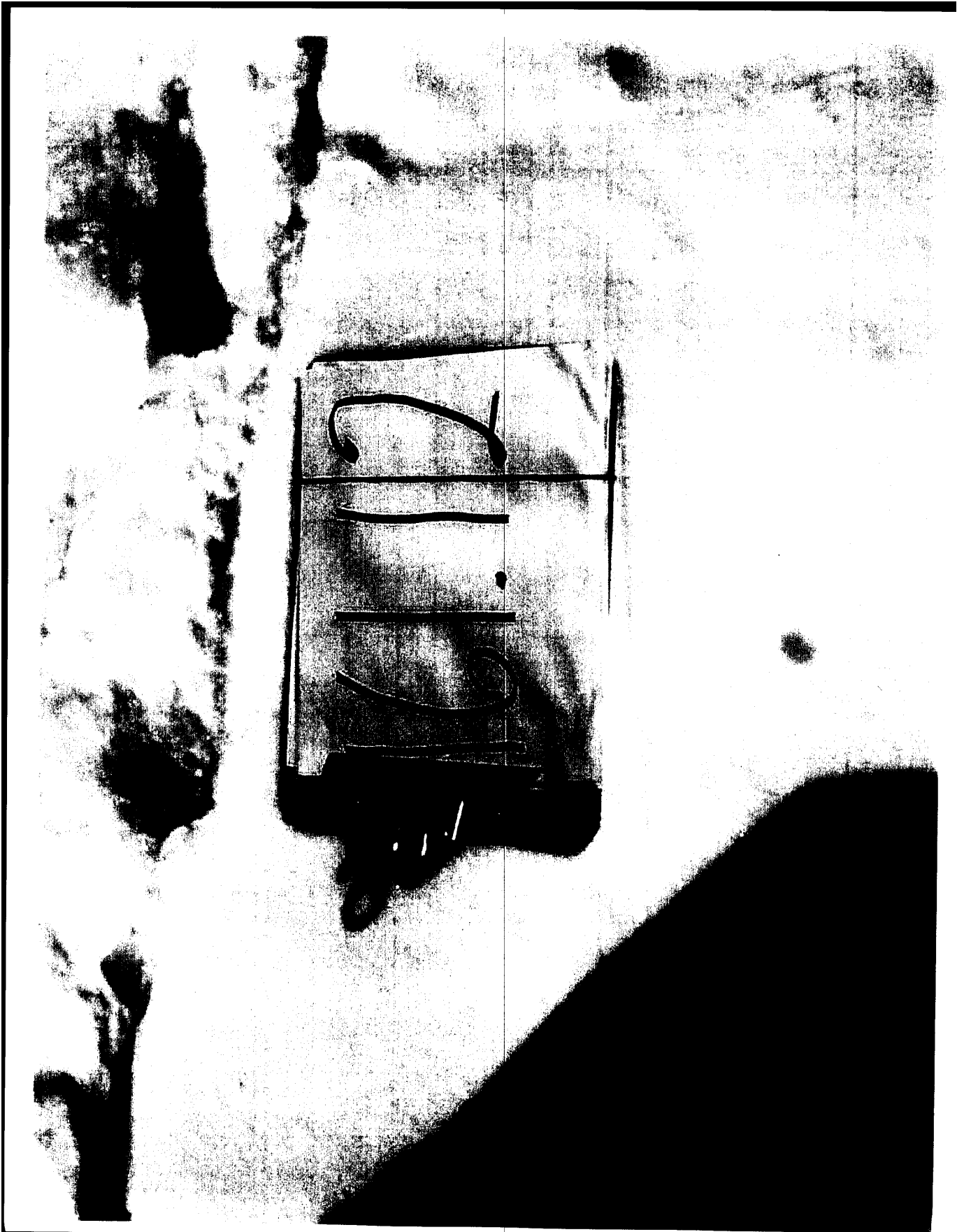








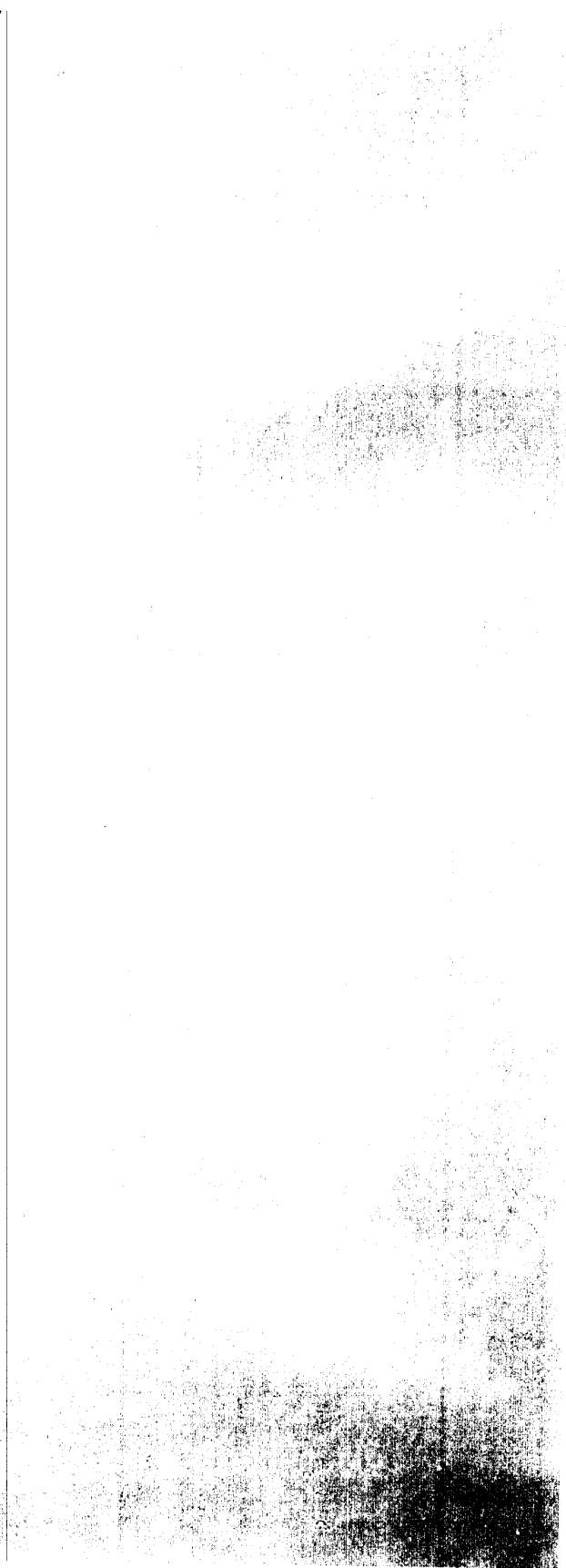
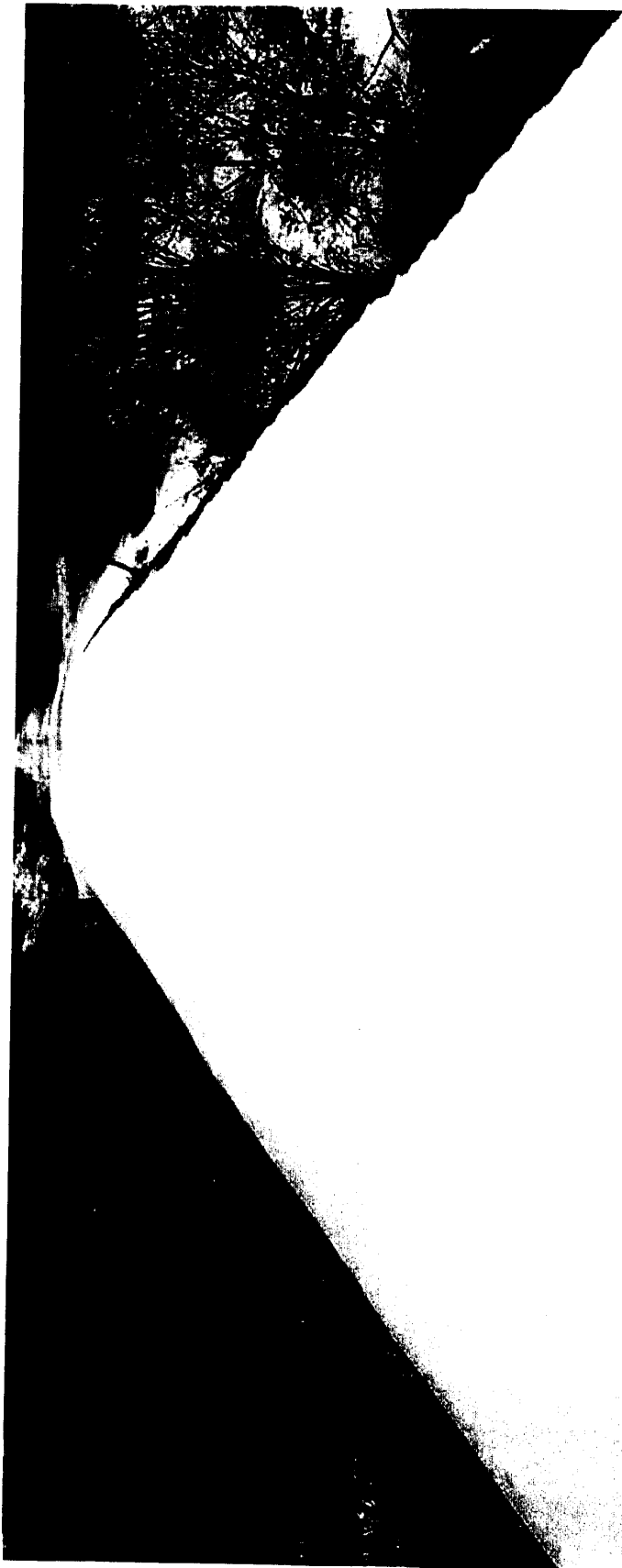












100-100-100



116402





16576





V

KANSAS

KSR&C No. 04-03-019

Kansas State Historical Society
Dick Pankratz, *Director, Cultural Resources Division*

KATHLEEN SEBELIUS, GOVERNOR

March 5, 2004

Brian Nettles
Freeborn & Peters LLP
311 S Wacker Dr Suite 3000
Chicago IL 60606-6677

Re: Abandon BNSF Line From Superior, Nebraska to Reynolds, Nebraska Which
Enters Republic County
Republic County

Dear Mr. Nettles:

We have reviewed the project identified above and have determined that it should not affect any property listed on the National Register of Historic Places or otherwise identified in our files as having historical significance. This office has no objection to implementation of the project.

Sincerely yours,

Terry Marmet
Acting State Historic Preservation Officer



Richard Pankratz, Director
Cultural Resources Division

clg

W



NEBRASKA STATE HISTORICAL SOCIETY

1500 R STREET, P.O. BOX 82554, LINCOLN, NE 68501-2554
(402) 471-3270 Fax: (402) 471-3100 1-800-833-6747 www.nebraskahistory.org

March 16, 2004

Brian Nettles
Freeborn & Peters LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606-6677

RE: Burlington Northern & Santa Fe Railway Company Abandonment of
Superior, Nebraska to Reynolds, Nebraska
HP #0403-026-01

Dear Mr. Nettles:

Thank you for submitting the referenced project proposal for our review and comment. Our comment on this project and its potential to affect historic properties is required by Section 106 of the National Historic Preservation Act of 1966, as amended, and implementing regulations 36 CFR Part 800.

Given the information provided, in our opinion there will be no historic properties affected by the project as proposed. Therefore, in accordance with 36 CFR 800.4(d)(1), you may proceed with the project as planned. Should any changes in the project be made or in the type of funding or assistance provided through federal or state agencies, please notify this office of the changes before further project planning continues.

There is always the possibility that previously unsuspected archaeological remains may be uncovered during the process of project construction. We request that this office be notified immediately under such circumstances so that an evaluation of the remains may be made, along with recommendations for future action.

Please retain this correspondence and your documented finding in order to show compliance with Section 106 of the National Historic Preservation Act, as amended. If you have any questions, please do not hesitate to call Greg Miller at 402.471.4775.

Sincerely,

L. Robert Puschendorf
Deputy State Historic Preservation Officer
Nebraska State Historic Preservation Office

6

DRAFT FEDERAL REGISTER NOTICE PER 49 C.F.R. 1152.60(c)

STB No. AB-6 (Sub No. 409X)

Notice of Petition for Exemption to Abandon and Discontinue Service

On April 8, 2003, The Burlington Northern and Santa Fe Railway Company (BNSF) filed with the Surface Transportation Board, Washington, DC 20423, a petition for exemption for abandonment of its rail freight easement and discontinuance of rail service between Milepost No. 167.78 near Superior, Nebraska and Milepost 127.83 near Reynolds, Nebraska, a distance of 39.95 miles in Jefferson, Thayer and Nuckolls Counties, Nebraska and Republic County, Kansas. Stations on the line are located at points have the following USPS ZIP codes: Hardy (68943), Byron (68325), Chester (68327), Hubbell (68375) and Reynolds (68429).

There are no federally granted rights of way.

The interest of railroad employees will be protected by the conditions imposed in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

Any offer of financial assistance will be due no later than 10 days after service and salvage of the line, the line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service